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IN THIS ISSUE

KING TUT SCULPTURE FOUND BADLY DAMAGED — EGYPTIAN MUSEUM UPDATE

PETER HASSRICK ON REMINGTON FAKES

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A REMBRANDT ANNOUNCED AT *IFAR EVENING*; IS IT?

INCORPORATING STOLEN ART ALERT

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35 STOLEN ART ALERT

COVER: Recovered, damaged. *Gilded Wooden Figure of Tutankhamun.* Looted from the Egyptian Museum in Cairo in January 2011; recovered in April. See story on page 2.

LOOTING AND DAMAGE IN EGYPT — AN UPDATE

The cover illustration of this issue is a sad reminder of the thefts and vandalism that occurred during the Egyptian revolution just a few months ago. The pictured gilded wood statue of Tutankhamun harpooning from a boat made of papyrus stems (**FIGS. 1A-C** and cover) was found on April 12, cruelly damaged, and although it can be restored, it will never be the same. A number of other objects have also been returned to the Egyptian Museum (**FIGS. 2A & B**), but many of the 54 items on the government's official list published on March 15 are still missing. (See the special section in the Stolen Art Alert of this issue devoted to still-missing and recovered Egyptian Museum items.) Amongst these is a red quartzite head of an Amarna Princess (**FIG. 3**) — in my opinion, one of the most beautiful portraits from antiquity.

The stolen objects, which obviously cannot be sold in the art market, and the deliberate defacement, raise an interesting question — who was responsible? Many Egyptians, as well as myself, believe that it was the work of hoodlums employed by the Mubarak regime, whose purpose was to create a sense of chaos that only the state run police could contain. After all, the losses were not only national treasures, but were part of an important tourist attraction helping to sustain Egypt's economy.

FIGURE 1A. ***Tutankhamun, The Harpooner.*** **Statue: Wood, coated with gesso and gilded. Boat: Papyrus stems. Height, Figure: 69.5 cm. Cat. no.: JE 60710. Shown above before damage. On January 28, 2011, the figure was broken by looters, who took all but the boat, the king's feet and right arm, the harpoon, and the hoop held in the left hand. Photo: F.L. Kenett.**

FIGURES 1B & 1C. ***Tutankhamun, The Harpooner.*** **Side and frontal views of the damaged object found on April 12. Photos: Courtesy, Egyptian government.**

The looting of archaeological sites and the store houses where finds were kept is almost entirely undocumented — the result of chronic recording failures by the antiquity authorities. In one case, that of the Metropolitan Museum of Art's warehouse in the 12th dynasty site at Dashur, the contents are well-recorded by the museum's staff, but the excavators have not yet been able to inspect it for any losses. In Abydos, in Middle Egypt, German archae-

FIGURES 2A & 2B. ***Fan with cartouche of King Tutanhkahmum.*** **One of four objects returned to the Egyptian Museum on April 12. According to the Ministry of State for Antiquities' press announcement, one face of the fan was in good condition (2A); the other was broken into 11 pieces (2B). Photos: Courtesy, Egyptian government.**

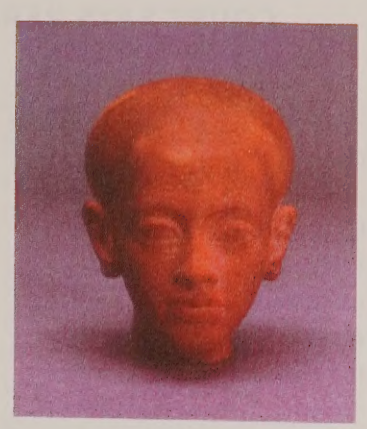

FIGURE 3. ***Quartzite Head of an Amarna Princess.*** **Ht. 14 cm. Cat. no. JE 65040. Stolen from the Egyptian Museum on January 28 and still missing.**

ologists found a five-meter-deep trench dug by looters. Unfortunately, the German finds have been kept in a government storage depot and consisted mostly of small objects, easily stolen and transportable out of Egypt. That has caused great concern to the Germans who have toiled for over 30 years and sifted through thousands of tons of sand to find the historical remains of the founding of the empire 5,000 years ago. Dr. Zahi Hawass, Minister of Antiquities, resigned in protest in March over the failure of the police to protect antiquity sites, but he has subsequently returned to duty. Unfortunately, the antiquity police, who are supposed to guard sites and warehouses are still absent, and the continuing thefts from standing monuments are not always easy to document, and those objects may be salable outside Egypt.

This deplorable situation raises another interesting question — that of the repatriation of some of the treasures from ancient Egypt now in foreign museums; their return forcefully demanded by Dr. Hawass. It is tempting to argue that they are safer, better preserved and studied where they are. As a former director of the Egyptian Museum once commented, "they are Egypt's best ambassadors." While that may be the case, Dr. Hawass has made it clear (cf. his February 22 interview with *Spiegel Online*) that the current unstable situation in Egypt will not deter him from his repatriation goals.

For now, we must be alert to any suspicious Egyptian objects appearing on the art market and, if requested, offer the Egyptian government any assistance we can in restoration, documentation, and supplying security devices for use in museums or archaeological sites. Such activities were formerly one of the duties of the Cultural Property Advisory Committee, but appear to have been forgotten.

— JACK A. JOSEPHSON
EGYPTOLOGIST; IFAR CHAIRMAN

• • •

NO BED OF ROSES: COURT SAYS VARA DOES NOT PROTECT "LIVING GARDENS"

"This"—noted the Seventh Circuit Court of Appeals in its recent decision effectively setting new borders on the Visual Artists Rights Act of 1990 ("VARA") —"is not an ordinary case." Thus, the decision rendered by that court this past February is no ordinary decision. With its rejection of artist Chapman Kelley's VARA claims and its reflections on "moral rights" and site-specific art, *Kelley v. Chicago Park District* [1] instantly and importantly contributes to the art law canon.

Figure 1. Chapman Kelley, *Chicago Wildflower Works I*, partial view, as seen before it was altered by the Chicago Park District in 2004.

The case involved *Chicago Wildflower Works I* ("*Wildflower Works*"), an enormous site-specific wildflower garden installed in a Chicago park in 1984 (FIG. 1), which the city significantly reconfigured in 2004 over the artist's objection. Kelley brought suit claiming that the reconfiguration violated his moral rights under VARA. He was, however, ultimately unable to convince the court that his work was sufficiently authored and fixed to be copyrightable — a statutory prerequisite to VARA protection. As the Seventh Circuit saw it, "a living garden like *Wildflower Works* is not copyrightable." (Italics added.)

The plaintiff, Chapman Kelley, is an artist who, in the late-1970s, began creating large outdoor wildflower displays that resembled his paintings. In 1984, he created *Wildflower Works*, a 1.5-acre garden in Chicago's Grant Park consisting of two huge elliptical flowerbeds bordered by gravel and steel. The hundreds of thousands of plantings included over 48 different native species, which the artist carefully chose "for various aesthetic, environmental, and cultural reasons," as well as for hardiness. The endeavor cost Kelley more than $80,000 — but it seemed to pay off in attention and acclaim. As the Seventh Circuit noted, *Wildflower Works* "was a hit." The piece weathered the next 20 years intact, despite ill-maintained grounds and permits, and the city's failed attempt in 1988 to terminate the project.

In June 2004, officials from the Chicago Park District met with Kelley to discuss problems relating to the garden's maintenance as well as the challenges the size of the work presented to the Park District's plans to build the adjacent Millennium Park. They proposed reducing the size of *Wildflower Works* by more than half, and changing the shape of the beds from ellipses to rectangles. While the Park District invited Kelley's comments, it made clear that the changes would be made with or without Kelley's

1 *Kelley v. Chicago Park Dist.*, Nos. 08-3701 & 08-3712, 2011 U.S. App. LEXIS 2915 (7th Cir. Feb. 15, 2011).

consent. Kelley objected, and a week later, the Park District proceeded with its plans.

Kelley sued the Park District for violating his moral rights (to attribution and integrity) as an author of a work of visual art under VARA, which provides that "the author of a work of visual art" (defined in the statute as a "painting, drawing, print or sculpture") ". . . shall have the right . . . to prevent any intentional distortion, mutilation, or other modification. . ." of his work. In all, Kelley requested $25 million in damages for the VARA violation, and remuneration for the $1.5 million he estimated the plants were worth.

The United States District Court for the Northern District of Illinois conducted a bench trial. In its ruling that followed, the court was loathe to "take too literalist an approach to determining whether a given object qualifies as a sculpture or a painting." It found that *Wildflower Works could* be considered both a sculpture — in that it involved the "manipulation of the flowers, metal, and gravel into an elliptical shape"— and a painting, in that it involved the application of color and was "conceived to be a painting to be viewed from a height." It nonetheless denied the VARA claim on the grounds that *Wildflower Works* failed the threshold test of copyrightability.[2] As the court pointed out, VARA, part of the U.S. copyright laws, is only enforceable as to copyrightable works of art. Thus, to "be protected under VARA, an object must (1) meet the statutory definition of 'a work of visual art' and (2) be subject to copyright protection."

The district court concluded that *Wildflower Works* was not sufficiently original to merit copyright protection.[3] It was also persuaded by a non-binding First Circuit case, *Phillips v. Pembroke Real Estate, Inc.*,[4] in holding that although "VARA is silent on the issue of site-specific art," it nevertheless does not extend to cover such works, including *Wildflower Works*. The trial court found, however, that the Chicago Park District had breached an implied contract with Kelley, and awarded him nominal damages of $1.

2 *Kelley v. Chicago Park Dist.*, No. 04-C-07715, U.S. Dist. LEXIS 75791 (N.D. Ill. Sept. 29, 2008).

3 In general, a work is subject to copyright protection if it is an "original [work] of authorship fixed in any tangible medium of expression . . . ." In taking issue with *Wildflower Works'* originality, it complained: "It is not clear what about the exhibit is original. Is it the elliptical design? The size? The use of native instead of non-native plants? . . . . Kelley leaves this Court to assume that he is the first person ever to conceive of and express an arrangement of growing wildflowers in ellipse-shaped enclosed area [sic] . . . ."

4 459 F.3d 128 (1st Cir. 2006).

On appeal, the Seventh Circuit first took issue with the lower court's determination that *Wildflower Works* could be considered a painting or sculpture. Although the Park District chose not to raise the issue on appeal (a decision the Seventh Circuit decried as an "astonishing omission"), the appellate court forcefully noted (albeit in *dicta*) that "VARA's definition of 'visual work of art' operates to narrow and focus the statute's coverage," and that, therefore, to "qualify for moral rights protection under VARA, *Wildflower Works* cannot just be 'pictorial' or 'sculptural' in some aspect or effect, it must actually *be* a 'painting' or a 'sculpture.' Not metaphorically or by analogy, but *really*." (Emphasis in original.)

The appellate court then turned to the issue before it — whether *Wildflower Works* is copyrightable (as noted above, a prerequisite to VARA). It rejected the lower court's conclusion that *Wildflower Works* is not original, noting that the requisite level of creativity under the copyright laws is "extremely low," and that *Wildflower Works* "plainly possesses more than a little creative spark." It also questioned (but did not rule on) the soundness of a categorical exclusion of site-specific art from VARA protection, noting that

The Appellate Court found that "the real impediment to copyright here . . . is that a living garden lacks the kind of authorship and stable fixation normally required to support copyright."

"*Phillips's* all-or-nothing approach to site-specific art may be unwarranted." It found, however, that "the real impediment to copyright here . . . is that a living garden lacks the kind of authorship and stable fixation normally required to support copyright." As to authorship, the court reasoned:

> Simply put, gardens are planted and cultivated, not authored. A garden's constituent elements are alive and inherently changeable, not fixed. Most of what we see and experience in a garden — the colors, shapes, textures, and scents of the plants — originates in nature, not in the mind of the gardener. At any moment in time, a garden owes most of its form and appearance to natural forces, though the gardener who plants and tends it obviously assists. All this is true of *Wildflower Works*, even though it was designed and planted by an artist. (Italics added.)
>
> Of course, a human "author" — whether an artist, professional landscape designer, or amateur backyard gardener — determines the initial arrangement of the plants in a garden. This is not the kind of authorship required for copyright.

In terms of the copyright laws' fixation requirement, the Seventh Circuit concluded that "a garden is simply too changeable to satisfy the primary purpose of fixation; its appearance is too inherently variable. It also questioned: "at what point has fixation occurred? When the garden is newly planted? When the first blossoms appear? When it is in full bloom?"[5]

Accordingly, the appellate court found *Wildflower Works* to be "neither 'authored' nor 'fixed' in the senses required for basic copyright," and thus rejected Kelley's VARA claim. Finally, the Seventh Circuit disagreed with the district court as to the existence of an implied contract between Kelley and the Park District, and ordered the district court to enter judgment in favor of the Park District on that claim as well.

5 The court was careful to point out that the a landscape designer's written plans, as recorded "in text, diagrams, or drawings on paper or on a digital storage device" is fixed and tangible, "giving rise to the designer's claim to copyright."

BERNE'S EMBERS: MORAL RIGHTS

As the Seventh Circuit noted, "VARA introduced a limited version of [the] European doctrine" of moral rights "into American law, but it is not an easy fit." Indeed, the court's discussion of this "unease," as well as the tortured history leading up to VARA's adoption, possibly provides some insight into its reluctance to extend VARA to *Wildflower Works*.

As the court noted, VARA was adopted in 1990 following the United States' decision, in 1988, to adhere to the Berne Convention for the Protection of Literary and Artistic Works, which had been established in 1886 in order to provide a baseline of international protection for copyrighted works. Article 6 *bis* of the Berne Convention — a particular obstacle to U.S. ratification — sets forth the concept of moral rights, or *droit moral*, and provides, among other things, that independent of an artist's economic rights, and even after a transfer of ownership rights, an artist retains the right (1) to claim authorship of the work and (2) to "object to any distortion, mutilation, or other

modification, or derogatory action in relation to" his work.

While the United States acceded to the Berne Convention in order to combat copyright piracy, its longstanding reluctance to join the Berne Union — which embraced the concept of *droit moral* — likely relates to the fact that *droit moral*, which considers the mistreatment of a work of art to be tantamount to a mistreatment of the artist himself, can operate at odds with certain bedrock principles of U.S. jurisprudence, such as property rights and free market considerations. When, in the 1980s, however, important works by revered artists such as Isamu Noguchi and Richard Serra were destroyed or dismantled by their owners, public opinion seemed to sway in favor of establishing limited "moral rights" in the United States.[6] Given the U.S. Congress' tepid acceptance of only limited moral rights, the Seventh Circuit may have considered it inappropriate to extend the scope of VARA to include *Wildflower Works*.

NOT A GARDEN VARIETY PROBLEM

The Seventh Circuit's judgment comes down to the determination that *Wildflower Works* "is quintessentially a garden," and that as such, it is an ever-changing entity that owes its appearance and other sensory qualities to the vagaries of nature, not the design of an artist.[7] *Kelley* thus raises questions as to whether artists working with plants or with other natural media, or media that exist in or interact with nature, can be said to have rights under VARA. How, for instance, would Maya Lin's *Wave Hill* — a series of uniform, rhythmically undulating grassy mounds installed at the Storm King Art Center — fare under *Kelley*? And, what to make of the way Robert Smithson's *Spiral Jetty* appears and disappears depending on water levels, and changes color and appearance in concert with ice, snow, and the surrounding "primordial sea" that periodically pigments it with pinkish-red algae? That these seminal works are neither entirely man (or woman)-made nor entirely natural seems to be their very point — they exist at the intersection between artistry and nature, both controlled and uncontrollable. They also call to mind Robert Rauschenberg's famous submission to an exhibition featuring "nature in art," for which he framed a square patch of growing grass (held in place by chicken wire) for hanging on a wall, then periodically visited the show to water the grass. As Leo Steinberg so elegantly described this gesture, Rauschenberg achieved a "transposition from nature to culture through a shift of ninety degrees."[8]

And this seems fundamentally what the 7th Circuit is attempting to define — the point at which nature shifts to culture, and in its view, a garden does not make that shift.

— **MARY MORABITO ROSEWATER**
IFAR LEGAL ASSOCIATE
AND
REBECCA RYDER NEIPRIS
IFAR LEGAL INTERN

6 See John H. Merryman, Albert Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts* 5th ed. (Alphen ann den Rijn, The Netherlands: Kluwer, 2007), p. 441-42; 467-68.

7 To complicate matters, the court noted that, in all probability, Jeff Koons' *Puppy*, a giant topiary covered by blooming flowers sustained by an irrigation system, "may" have been sufficiently fixed to have merited copyright protection.

8 Leo Steinberg, "Other Criteria," *Other Criteria: Confrontations with Twentieth Century Art* (New York: Oxford University Press, 1972), p. 86.

PHOTOGRAPHER PREVAILS IN PRINCE COPYRIGHT INFRINGEMENT ACTION: COURT TAKES FIRM STANCE ON APPROPRIATION ART AND FAIR USE; DEFENDANTS APPEAL

A recent federal court copyright infringement ruling for French photographer Patrick Cariou reflects the inherent tension between photographers and the so called "appropriation artists" who take their images without permission.[1] This decision, which adds definition to the legal boundary of copyright law's fair use exemption, will not be the last word, as the defendants, artist Richard Prince and gallerist Larry Gagosian, have filed an appeal.

"The Court recognized the artistic nature of Prince's Canal Zone works, but ruled out the possibility that artistic appropriation is a 'per se' fair use."

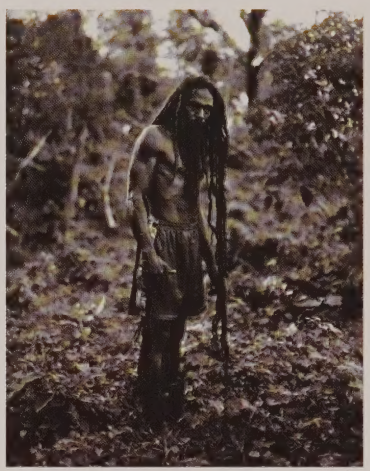

FIGURE 1A. PATRICK CARIOU, *Yes Rasta*, 2000. Photograph. © Patrick Cariou. Photo: From *Yes Rasta* by Patrick Cariou, published by powerHouse Books.

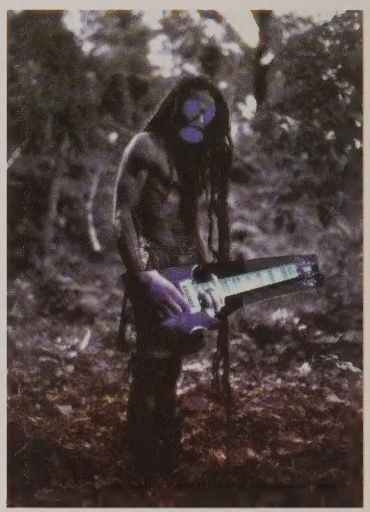

FIGURE 1B. RICHARD PRINCE, *Graduation*, 2008. Collage, inkjet and acrylic on canvas. 185 x 133 cm.

The dispute began in November of 2008 when Cariou learned that his upcoming New York show had been cancelled. Gallerist Christiane Celle was reluctant to sell work that had "been done" already at the nearby Gagosian Gallery. Celle wanted to avoid the perception that she was riding on the success of well known "appropriation" artist Richard Prince, who, unbeknownst to Cariou, had used a number of the photographer's works in a mixed-media series entitled the *Canal Zone*, which was on display at one of Gagosian's New York locations. Cariou sent a cease and desist notice, but it had no effect. In December 2008 he filed for copyright infringement.

The named defendants were artist Richard Prince; Prince's dealer Larry Gagosian and the Gagosian Gallery, Inc. ("Gagosian Defendants"); and Rizzoli International Publications, Inc., the publisher of the *Canal Zone* catalogue. Rizzoli was dismissed from the action on February 5, 2010, and both sides moved for summary judgment shortly thereafter. In his motion, Cariou asserted direct copyright infringement, conspiracy to commit copyright infringement, and contributory and vicarious infringement by the Gagosian Defendants.

This March, the New York District Court decided in Cariou's favor, and in so doing dismissed a number of defenses, including that Prince's *Canal Zone* works fall within the safe harbor of the fair use doctrine. It did not grant all of Cariou's claims, however, dismissing his charge of conspiracy to commit copyright infringement on the holding that any recourse on these grounds was subsumed within the broader principles of contributory and vicarious liability.

1 *Cariou v. Prince*, No. 08 Civ. 11327, *2011 U.S. Dist. LEXIS 29070* (S.D.N.Y. March 18, 2011).

FIGURE 2A. PATRICK CARIOU, *Yes Rasta*, 2000. Photograph. © Patrick Cariou. Photo: From *Yes Rasta* by Patrick Cariou, published by powerHouse Books.

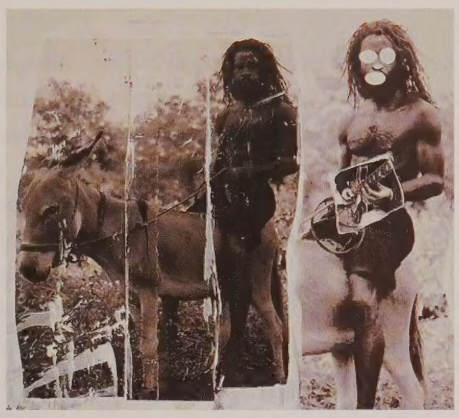

FIGURE 2B. RICHARD PRINCE, *Back to the Garden*, detail of Fig. 2C.

FIGURE 2C. RICHARD PRINCE, *Back to the Garden*, 2008. Collage, inkjet and acrylic on canvas. 333 x 254 cm.

THE APPROPRIATED PHOTOGRAPHS

Prince's disputed appropriation involves a series of portrait photographs shot by Cariou over a roughly six-year period he spent living in rural Jamaica amongst Rastafarians, a people traditionally marginalized and discriminated against in Jamaican society (FIGS. 1A-2C). Cariou published these photographs in the 2000 book entitled *Yes Rasta*, and he retains all rights in the works. Prior to the

cancellation of his gallery show, the plan was for Cariou's gallerist, Celle, to display between thirty and forty of the *Yes Rasta* photographs at prices ranging from $3,000 to $20,000.

"Prince and Gagosian ultimately lost on all four fair use factors. Aside from finding minimal transformation, the Court noted the defendants' highly commercial purpose, as well as their bad faith in knowingly refusing to seek permission to use the *Yes Rasta* photographs..."

Prince had come across *Yes Rasta* and, liking what he saw, incorporated some of the images into a group of mixed-media paintings named after his equatorial birthplace. Prince made varying use of Cariou's photographs, sometimes printing whole images onto base canvasses before further collaging or painting the works. Prior to the Gagosian exhibition, Prince showed some of the works at the Eden Rock hotel in St. Barts. Included in that group was *Canal Zone*, a collage composed of thirty-five photographs Prince had torn from *Yes Rasta*. Prince's exhibition at the Gagosian Gallery featured twenty-two of the *Canal Zone* paintings, eight of which sold for a total of $10,480,000. Seven others were traded for art valued between six and eight million dollars.

Prince is known for "rephotographing" mass-produced images, accentuating "what's already real" about the image and adding an "aura" absent from the original.[2] In his *Cowboys* series, which garnered widespread popularity and commercial success, Prince cropped photographs from Marlboro advertisements, removing any brand names or proprietary marks. Along with a handful of other notable appropriators, Prince has assumed a celebrated place in the art world, his work seen as a comment on post-modern society. Not everyone agrees. Philip Morris never sued Prince over the *Cowboys*; Patrick Cariou was not so forgiving.

Like other similarly situated defendants before them, Prince and Gagosian invoked the doctrine of fair use. Part of the 1976 Copyright Act, fair use permits the use of copyrighted materials for purposes such as "criticism, comment, news reporting, teaching, scholarship, or research,"[3] thus mediating between the restrictions of copyright law and the speech protections of the First Amendment.[4]

The Copyright Act stipulates four fair use factors: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; (4) the effect of the use upon the potential market for or value of the copyrighted work."[5]

When evaluating the purpose and character of a defendant's use, courts focus on whether the use is "transformative." In other words, whether the new work "merely supersede[s] the objects of the original creation or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message ..."[6] Transformation is not always necessary to a valid defense, but the more transformative a defendant's work, the "less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use."[7]

---

2 Nancy Spector, *Richard Prince* (New York: Guggenheim Museum Publications, 2007), pp. 28-29.

3 §17 U.S.C. §107.

4 *Blanch v. Koons*, 467 F.3d 244, 250 (2d Cir. 2006).

5 *Id.*

6 *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994).

7 *Id.*

On Prince's use of the *Yes Rasta* photographs, the district court held that the "paintings are transformative only to the extent that they comment on the [p]hotos; to the extent they merely recast, transform, or adapt the [p]hotos, Prince's paintings are instead infringing derivative works." [8] The court recognized the artistic nature of Prince's *Canal Zone* works, but ruled out the possibility that artistic appropriation is a "per se" fair use.[9] As the court found that Prince had not intended to comment on "any aspects of the original works or on the broader [Rastafarian] culture," his use did not meet the standard for transformation.[10]

Prince and Gagosian ultimately lost on all four fair use factors. Aside from finding minimal transformation, the court noted the defendants' highly commercial purpose, as well as their bad faith in knowingly refusing to seek permission to use the *Yes Rasta* photographs, both before and after receipt of Cariou's cease and desist notice. On the nature of the copyrighted work and the amount used, Cariou's photographs were deemed highly creative works of authorship, a "substantially greater than necessary" portion of which Prince had used in his *Canal Zone* paintings. Lastly, as Cariou's gallery cancelled his show expressly because of Gagosian's *Canal Zone* exhibition, the defendants were found to have overridden the market for Cariou's work.

THE KOONS DECISIONS

While Richard Prince continues to cause controversy with his photographic conversions, he has (at least until now) been relatively adept at staying out of court. The same cannot be said for Jeff Koons, who, aside from Prince, has caused perhaps the biggest stir of any living appropriation artist. Over the past three decades Koons' unapologetic practice has made him a defendant in a number of leading U.S. copyright cases, whose decisions have formatively impacted the way that courts approach transformation under the fair use doctrine.

In the 1992 case of *Rogers v. Koons*, the Second Circuit Court of Appeals upheld a ruling that Koons had violated the copyright of photographer Art Rogers. The court decided that Koons' work, *String of Puppies*, an edition of sculptures fashioned after the plaintiff's copyrighted photograph entitled *Puppies*, was neither a parody nor a commentary on the underlying image, and was thus not transformative and, therefore, not eligible for fair use protection.

In *Blanch v. Koons*, decided in 2006, Koons was sued for including part of a fashion advertisement by photographer Andrea Blanch in his own collage. This time the Second Circuit found for Koons, holding that his use of Blanch's image *was* transformative in that it commented on the larger related issue of consumerism. Koons' taking, in other words, was motivated by a purpose other than pure artistic creativity.

The Koons lawsuits set precedent which remains in place today. The Cariou court in fact cited to the *Rogers* decision when adopting the position that "[i]f an infringement of copyrightable expression could be justified as fair use solely on the basis of the infringer's claim to a higher or different artistic use … there would be no practicable boundary to the fair use defense." [11]

THE RULING AGAINST PRINCE

The recent decision exacts a high penalty. Prince and Gagosian have been ordered to turn over possession of all infringing copies of the *Yes Rasta* photographs, including

8 *Cariou v. Prince*, No. 08 Civ. 11327, *2011 U.S. Dist. LEXIS 29070 at 18* (S.D.N.Y. March 18, 2011).

9 *Id.* at 17.

10 *Id.* at 18.

11 *Id.* citing *Rogers v. Koons*, *960 F.2d 301*, 310 (2d Cir. 1992).

any unsold *Canal Zone* paintings, "for impounding, destruction, or other disposition, as [Cariou] determines..."[12] They must also inform all current or future owners that Prince's paintings were made illegally and cannot be legally displayed, whether in private or public. The court imposed additional liability on the Gagosian Defendants on the finding that Gagosian could have but did not insist that Prince obtain licenses to use the *Yes Rasta* photographs before offering the *Canal Zone* works for sale. A separate proceeding for damages, scheduled for May 6, was subsequently adjourned indefinitely *(sine die)* in light of the defendants' appeal.

Those opposed to this decision will point to the failings of the fair use doctrine, whose four-pronged analysis is fact intensive and variable from case to case. Many believe that artists and speakers alike deserve a more bright line policy, while the task of determining when the line has been crossed has become even more difficult with appropriation art and the nuances of transformation. If art historians still debate the merits of artistic appropriation, one wonders how judges can be sure. The district court has confirmed that sheer creativity is an insufficient basis on which to assert fair use in defense of appropriation art. This knocks the wind out of artists who, like Prince, base their practices largely upon the artistic use of found content. While leading case law in this area involves famous defendants like Prince and Koons, thousands of less commercial artists are also affected by the precedent of these highly publicized lawsuits. Much will be riding on the Second Circuit's ruling in Prince's appeal. Until then, the intersection of appropriation art and copyright law has become a little clearer.

— ADAM YOKELL, ESQ.
IFAR RESEARCH ASSOCIATE

12 *Cariou v. Prince*, No. 08 Civ. 11327, *2011 U.S. Dist. LEXIS 29070* at 37 (S.D.N.Y. March 18, 2011).

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IS THIS PAINTING BY REMBRANDT? AT AN *IFAR EVENING*, THE CHAIRMAN OF THE REMBRANDT RESEARCH PROJECT SAYS "YES"

It has hardly ever been on view since entering the Metropolitan Museum's collection, and the Rembrandt Research Project (the RRP) downgraded the work in 1982 as "an imitation,"[1] but at an *IFAR Evening* in March devoted to the RRP, the current — and very influential — RRP Chairman, Ernst van de Wetering, declared the Met's small *Portrait of Rembrandt as a Young Man* **(FIG. 1)** to be, in fact, a Rembrandt.[2]

Turning to the Met's Curator of European Paintings, Walter Liedtke, sitting in the audience, and apologizing for not having had the chance to alert him to his revised opinion of the work, which he had examined that very morning at the museum, van de Wetering said that the reassessment was his "present" to Liedtke. "I hope you accept it; it's a wonderful little painting." All eyes turned to Liedtke, who answered: "I might." With that cautious response it became clear that the world of Rembrandt attributions — or reattributions in this case — is not so simple.

The little portrait (8 5/8 x 6 ½ inches) on oak panel was bequeathed to the museum by an American collector in 1952 and accessioned the following year. It has a distinguished although not very old pedigree. Its first confirmed recording is in the collection of King Leopold II of Belgium (d.1909),[3] and it was later owned by financier J.P.Morgan. But it was on stylistic grounds, and not lack of early provenance, that the work was relegated to the Met's reserves and rejected by the RRP.

The *Portrait* had been accepted as a Rembrandt by many early twentieth-century scholars, including Wilhelm Valentiner, Hofstede de Groot and Abraham Bredius; however, even before the RRP, Horst Gerson questioned that attribution in his 1969 revised edition of Bredius' catalogue raisonné.[4]

FIGURE 1. (Self) ***Portrait of Rembrandt as a Young Man.*** **Oil on oak panel, 8 5/8 x 6 ½ in. Metropolitan Museum of Art, New York. Bequest of Evander Schley, 1952. Catalogued in the museum's Collection Database as "Style of Rembrandt," but said by Ernst van de Wetering on March 10, 2011 to be a work by Rembrandt. Photo: Courtesy, Metropolitan Museum of Art.**

In a cataloguing system of A, B and C (accepted, uncertain, and

1 J[osua] Bruyn et al. "1625-1631." *A Corpus of Rembrandt Paintings*, Vol.1 (The Hague, 1982), no. C38.

2 An *IFAR Evening* talk by Ernst van de Wetering on "The Rembrandt Research Project: Reflections, Revelations, Reversals," organized by the International Foundation for Art Research and held at Christie's on March 10, 2011. A more expansive article relating to the talk will be published in a future issue of *IFAR Journal.*

3 The RRP (*Corpus,* v.1, no. C38) believed that the painting had inspired a 1790 engraving with an inscription stating that the Rembrandt original was in a collection that the RRP could trace to the mid 18th century. But the Met questions the relationship between this painting and the engraving. See Walter Liedtke, et al. *Rembrandt/ Not Rembrandt in The Metropolitan Museum of Art: Aspects of Connoisseurship*, Exh. Cat., The Metropolitan Museum of Art, Vol. 2 (New York, 1995), p. 89.

4 A[braham] Bredius, *The Complete Edition of the Paintings*. 3rd ed. (revised by H. Gerson), (London, 1969), p. 547, no. 10: "I am not convinced that the attribution to the young Rembrandt is correct."

"... van de Wetering said that the reassessment was his 'present' to Liedtke. 'I hope you accept it; it's a wonderful little painting.' All eyes turned to Liedtke, who answered: 'I might.'"

not accepted), the Rembrandt Committee, which examined the painting in 1969, gave the work a "C", noting, among other discrepancies, that the brush work and color "differ substantially from those found in Rembrandt's early work," and that the "strokes of brown used to draw the eyes . . . [were] totally unlike Rembrandt and his school." They dated the work "well after 1630" (because of the "free brushstroke" and "aberrant use of color"). Dendrochronological tests (which study the number of rings of wood) have determined that the probable felling date (due to statistical average) of the oak tree from which the panel derived is 1614.

The Met's own Website Collection Database lists the work as "Style of Rembrandt (Dutch, about 1630-35)," but the catalogue entry written by Walter Liedtke for the Met's 1995 *Rembrandt/Not Rembrandt* exhibition (Vol. II, no. 21) dated it to ca.1660 or later, and described the painting as a "modest homage to Rembrandt."

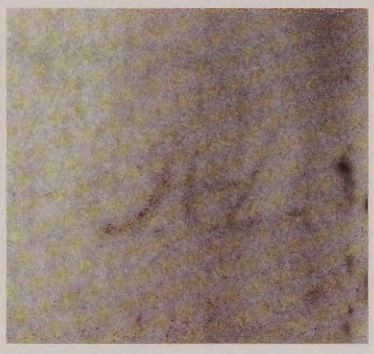

FIGURE 2. Autoradiograph of Figure 1, detail, showing the monogram signature in the right background. Photo: Courtesy, Metropolitan Museum of Art

FIGURE 3. REMBRANDT VAN RIJN, *Rembrandt Laughing*. Oil on copper, 22.2 x 17.1 cm. Private Collection. Detail showing the monogram RHL in raking light.

THE RRP

The Rembrandt Research Project, an ambitious initiative formed in 1968 to reassess and prune the vast number of paintings that had been assigned to Rembrandt over the years, has since whittled the Rembrandt corpus down some one hundred works. While the final number of "accepted" works is not certain, and van de Wetering refuses to be pinned down, it will be between 300 - 350, significantly fewer than the 420 works accepted as autograph by Gerson in 1969 and the 611 works accepted by Bredius in 1935.

In the early years, the RRP was, in the minds of many people, overly restrictive in its definition of what constituted an autograph work by Rembrandt. But many of the Committee members retired after the 1989 publication of Volume 3 of the *Corpus of Rembrandt's Paintings* (the sixth and final volume will be completed this year), and other Committee members have since left the Project, leaving van de Wetering, the youngest member, effectively alone to complete the Project. In the last few years, he has revised some of the Committee's earlier opinions, taking a more inclusive approach to Rembrandt's work.

It is this new, more expansive approach that led to his surprise announcement in March. Van de Wetering told IFAR's packed audience that he had never been comfortable with the RRP's rejection of the Met's (Self) *Portrait* — that the painting had "haunted" him for years. He disagreed at the time with the Committee's initial assessment that the loose, painterly brushstroke dated the work to a later period (a view also expressed in the *Rembrandt/Not Rembrandt*

FIGURE 4. X-radiograph of Figure 1, showing traces of an underlying painting with a figure wearing a gorget (visible lower left). This figure must have been comparable to the *Laughing Soldier* in Figure 5. The shoulders of the underlying figure are vaguely visible below the shoulders of the present figure. The lead white-containing passages in the two superimposed faces interfere in the x-radiograph. Photo: Courtesy, Metropolitan Museum of Art.

catalogue). He also objected to the Committee's view that you cannot have "an early Rembrandt, which looks as if it's a late Rembrandt, painted in a rough manner. . ."

The morning of the IFAR talk he visited the museum and examined the little painting again, as well as autoradiographs taken of the work many years before. One of the autoradiographs **(FIG. 2)** showed that the monogram in the background, to the right of the face (level with the chin), previously believed to consist of only two initials — R and L — (see, for example, the Met's Website and Walter Liedtke's 2007 catalogue of the museum's Dutch paintings) actually contained a third letter, "H", an initial included in Rembrandt's monograms from 1626 on. (Rembrandt included the "L" from around 1628 to 1632, after which he began signing with his first name.) The initials stand for Rembrandt Harmensz Leydensis. The discovery of the previously unnoticed traces of an RHL monogram in the autoradiograph added an extra argument in support of the reattribution of the painting to Rembrandt. The types of signatures Rembrandt applied during his early Leiden period were long unknown, van de Wetering told IFAR after the talk, as Rembrandt's early works were mostly not recognized as works of the young master. That, he added, makes it very unlikely that the RHL monogram was a spurious addition.

Van de Wetering bolstered his argument with additional technical evidence: an x-radiograph of the work, also taken years before, which, upon re-examination, revealed something that had previously been overlooked: highlighted areas beneath the brown paint indicating that underneath the Met's portrait was another work, a soldier wearing a finely painted metal collar, known as a gorget **(FIG. 4)**. Such superimposed paintings, he said, were common in Rembrandt's early works — he had already shown the audience several, and the gorget was like that seen in a tiny painting of a *Laughing Soldier* on

FIGURE 5. REMBRANDT VAN RIJN, *Laughing Soldier (Laughing Man)*. Oil on copper, 15.3 x 12.2 cm. Mauritshuis, The Royal Picture Gallery, The Hague.

copper in the Mauritshuis in The Hague **(FIG. 5)**, discussed earlier in his talk, a painting whose loose and rough brushstroke had also spurred differences of opinion amongst the RRP members, with van de Wetering arguing for it sufficiently at that time to prevent the work's total rejection (it received a B, but has since been upgraded).

The loose brushstroke of the Met's painting relates to another theme van de Wetering brought up at the talk, one of his newest insights (discussed in Volume 4 of the *Corpus*), namely, that the young Rembrandt did not paint such small self-portraits as refined masterpieces of self-reflection, but rather as something like "cartes de visite" to satisfy the curiosity of art lovers who were "interested to see or possess the effigy of this remarkable young man.

From 1632 onwards, Rembrandt produced etched self-portraits for that purpose. His generally larger, painted self-portraits after 1632 must have served as collectors items."

NOT EVERYONE'S CONVINCED

Not so quick, Walter Liedtke, the Met's curator, told IFAR a few days later. "We really ought to study the picture more closely . . . and, pending further study, we still don't think it's a Rembrandt." Ernst van de Wetering, he added, "did not touch on the weaknesses of this painting . . . the sheer level of quality, or lack thereof."

Liedtke's concerns about the portrait are primarily qualitative. He noted that, "There are sloppy qualities of execution on the surface"; . . . "awkward qualities," and that certain elements, such as "the swirls of black and brown horizontal lines above the eyebrows, don't seem worthy of Rembrandt." "There is poor articulation"; the painting lacks Rembrandt's "convincing effect of modeling with light"; and the highlights are wrong — the patch next to the nose, for example, "flattens the cheekbone, and Rembrandt wouldn't flatten like that." Moreover, the sitter's hair lacks "the soft volume of curls that one would find in a Rembrandt."

As to the monogram, Liedtke noted that the autoradiograph that van de Wetering showed is not new; it dates to the 1980s and was made for a book published by the Met, but was not included in it. The monogram has long been known.[5] Its "R" and "L" are visible on the painting surface. And, although the autoradiograph, Liedtke agreed, does suggest three letters, RHL — the absence of the "H" from the paint surface may simply be due to abrasion — the real question is "who painted the monogram?" Someone else could have overpainted the work on an earlier Rembrandt monogram, or the monogram could have been added by someone other than Rembrandt.

Nor is it clear at what layer of the painting the monogram lies; it could be on the surface, or lower down. Autoradiographs do not tell us the paint layer. Based on van de Wetering's observations, Liedtke added, the monogram will have to be studied to see whether it is consistent with the craquelure of the paint and varnish, and whether its chemical composition is consistent with the picture and paint layer. For now, however, the work will remain in the museum's reserves, but it will be on view "when the Met opens a gallery for Small Dutch Paintings" in 2013.

TO BE CONTINUED

The debate about the painting's attribution is clearly not over. It will be discussed again by Ernst van de Wetering in Volume 6 of the *Corpus* and in a future issue of *IFAR Journal,* where he will also elaborate on other paintings and issues addressed at the *IFAR Evening* talk in March.

— SHARON FLESCHER

[5] The monogram, as RL, is mentioned on The Met's Website, in the catalogue for *Rembrandt/Not Rembrandt,* and in Walter Liedtke, *Dutch Paintings in the Metropolitan Museum of Art,* Vol. 2 (New York, 2007), no. 161. Hofstede de Groot, in *A Catalogue Raisonné of the Works of the Most Eminent Dutch Painters of the Seventeenth Century,* Vol. 6, (London: 1908-1927), no. 564, noted 3 letters — RHL — in the monogram.

LETTERS TO THE EDITOR

REMINDER

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FINDING THE REAL FREDERIC REMINGTON

PETER H. HASSRICK*

Back in the mid-1980s, the Buffalo Bill Historical Center in Cody, Wyoming, embarked on an ambitious exhibition plan to reveal the hidden talents of the American artist Frederic Remington. In his lifetime (1861-1909) he was revered as the "pictorial historian of the Great West," and well through the next two generations that label stuck.[1] He was appreciated almost exclusively for the accuracy he supposedly brought to the depiction of the frontier saga. His actual accomplishments as a painter and sculptor, his aesthetic vision, the evolution of his technique and style, and his contributions to the corpus of American art were all subverted by the public's expectations of him as a historical literalist. The Cody exhibition was designed as something of a corrective to those entrenched perceptions. It ended up doing even more; it was the impetus for a catalogue raisonné on an artist who is one of the most imitated and faked in all of American art.

"Between 1985 . . . and 1996, when the two-volume . . . [Remington] *Catalogue Raisonné* was published, 248 works were reviewed. Only fifty-three of those, or slightly more than 20%, were deemed to be original works by Remington."

The Historical Center teamed up with The Saint Louis Art Museum, and the resulting exhibition, *Frederic Remington: The Masterworks,* ultimately traveled also to the Museum of Fine Arts, Houston and The Metropolitan Museum of Art in New York. Among the several chapters in the accompanying catalogue were one by Saint Louis' curator Michael Shapiro (now Director of the High Museum of Art in Atlanta) on Remington's genius as a sculptor and one by me, as director of the Historical Center and curator of its art wing, the Whitney Gallery of Western Art, on his developing talents as a painter.

As I was building the exhibition checklist for the paintings, it occurred to me that it might be a worthy effort to assemble concurrently an illustrated accounting of all the artist's flatwork — oils, watercolors and drawings. The Historical Center's Harold McCracken Research Library had recently acquired an invaluable multi-volume set of scrapbooks, assembled by bibliophile and Remington expert Helen Card and filled with clippings of nearly every known Remington illustration. From that source it looked as if there might be approximately 3,000 such works. Collating these and tracking down as many of the original pieces as possible would, it seemed, make a valuable contribution to Remington scholarship and might also aid in better understanding the stylistic and technical progression that was central to the exhibition's mission. To accomplish this task, I enlisted the assistance of Melissa J. Webster, who soon became a vital part of the vetting process for decisions that had to be made about the veracity of original works that came to our attention and might be added to what by 1984 was being referred to not simply as a listing, but a veritable Remington catalogue raisonné.

* Peter Hassrick is Director Emeritus of the Buffalo Bill Historical Center, the Petrie Institute of Western American Art at the Denver Art Museum and the Charles Russell Center for the Study of Western American Art at the University of Oklahoma. He is author of numerous books and articles on Remington, including co-authorship, in 1996, of *Frederic Remington: A Catalogue Raisonné of Paintings, Watercolor and Drawings.*

1 "Painting the West Many Colors," *New York Sun*, December 30, 1892.

A CATALOGUE RAISONNÉ IS BORN

I had started my museum career in 1969 as Curator of Collections for the Amon Carter Museum of Western Art in Fort Worth. Its sizable and vastly important collection of Remington art, combined with the impressive complimentary holdings of the Sid W. Richardson Foundation, also in Fort Worth, became the subject of my first book, *Frederic Remington: Paintings, Drawings and Sculpture in the Amon Carter Museum and Sid W. Richardson Foundation Collection*, published by Harry N. Abrams, Inc. in 1973. As a result of that publication, and an associated retrospective exhibition that I organized at the museum the same year, I emerged as something of an overnight "expert" on Remington's art. People began to contact the museum, asking for my opinion on everything from paintings and sculpture to memorabilia and biographical facts. I accepted the role rather reluctantly and quite sporadically, continuing in that vein after I left the Carter Museum in 1976 and became the director of the Historical Center in Cody.

In 1984, with the nascent stirrings of a catalogue raisonné surfacing, I decided to formalize the authentication process. To that end, and after much wrangling with the Historical Center's legal council, the Board approved a uniform "Request for Authentication Form" and "Procedural Guidelines" for the process. Within these contractual documents and logistical imperatives, the following provisions had to be met: the request had to come directly from the current owner of the work (not a dealer or other representative), who was required to sign a declaration of ownership and a waiver of liability; the owner needed to be an active member of the Historical Center's Patrons Association; and the object had to be personally inspected by me (insured and shipped to and from the museum at the owner's expense).

Between 1985, when the program was formally initiated, and 1996, when the two-volume *Frederic Remington: A Catalogue Raisonné of Paintings, Watercolors and Drawings* was published, 248 works were reviewed. Only fifty-three of those, or slightly more than 20%, were deemed to be original works by Remington. These were then added to the catalogue raisonné. The authentication process has continued with only modest interruptions since then. Since the publication, the percentage of authentic and inauthentic pieces has remained constant.

In 1996 the Historical Center organized, hosted and circulated a didactic exhibition about the process of compiling a catalogue raisonné. Titled *In Search of Frederic Remington*, the show traveled to four museums after its debut in Cody. Central to this exhibition's purpose were questions of how an authentic work is determined and what sort of inauthentic works existed. Rather than referring to all inauthentic objects as "fakes," they were categorized according to a carefully considered variety of types. Webster, who contributed two of the four introductory chapters to the catalogue raisonné (which served as the catalogue for the exhibition), wrote on Remington connoisseurship in a chapter on "The Frederic Remington Catalogue Raisonné." She articulated four types of inauthentic works, categorizing them either as pastiches, copies, fakes or forgeries. The Remington Committee continues to use these terms today. None of the terms, except for forgeries, *necessarily* implied intent to deceive, that is, until or unless the object's creator or some subsequent party applied a "Remington" signature. Copies, for instance, may be unsigned, having been painted as an artistic exercise or simply for the pleasure of a Remington-like image on the wall. But when a signature is added, a forgery is created.

"Rather than referring to all inauthentic objects as 'fakes,' they were categorized according to a carefully considered variety of types. . . . pastiches, copies, fakes, or forgeries."

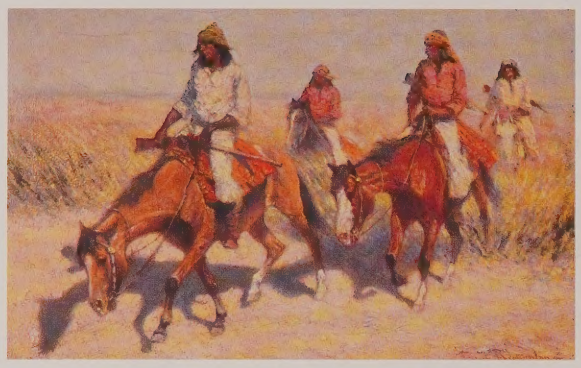

FIGURE 1A. After **FREDERIC REMINGTON**, *The Pool in the Desert*, n.d. Oil on canvas. 14 ⅜ x 20 ⅛ in. Bequest of Robert W. Purcell, 92.5. Image courtesy Frederic Remington Art Museum, Ogdensburg, NY.

FIGURE 1C. *The Pool in the Desert*, 1909. Photolithographic print published by *Collier's*. 6 ¾ x 10 ½ in. Image courtesy Frederic Remington Art Museum, Ogdensburg, NY (Public Library Collection).

FIGURE 1B. **FREDERIC REMINGTON**, *Pool in the Desert*, 1907-1908. Oil on canvas. Private collection. Image courtesy Hubbard Museum of the American West, Ruidoso Downs, NM.

COPIES

Of all the categories, copies seem to be the most prevalent. It is probably these that occasioned the Remington scholar R. W. G. Vail of the New York Public Library to exclaim as early as 1929 that because of Remington's popularity there were probably more inauthentic Remington canvasses on the market than by "any other American painter."[2]

"The experts . . . have looked at a dozen or more copies like this, and, with tongue in cheek, have dubbed their author 'master of the grid'."

Since Remington was an illustrator for most of his career (and even in his later life, when he sought recognition as a painter, most of his paintings were illustrated in popular magazines), his images were ubiquitous, and readily available to copy. Approximately 40% of all the inauthentic works submitted to the Historical Center's program since 1985 fall in the category of signed, fraudulent copies.

A prime example of a fraudulent copy is owned by the Frederic Remington Art Museum in Ogdensburg, New York. This color oil (**FIG. 1A**) derives from a 1910 *Collier's* color illustration of a painting titled *Pool in the Desert* (**FIG. 1B**), currently in private hands. The *Collier's* illustration (**FIG. 1C**) was cropped for some reason by the magazine's editor so that the pool is not visible. The signed, fraudulent copy, with the *Collier's* reproduction as its model, was manufactured by a painter who was unaware that the original composition was both more expansive in scale and thematically true to the title.

Copies come in many styles and methods. One of the most prolific copyists — whose name is still unknown — had a propensity for employing underlying pencil gridlines, a technique of "squaring" images for transfer. This technique has been noticed

2 R. W. G. Vail, "The Frederic Remington Collection," *Bulletin of the New York Public Library*, 3 (February 1929), p. 73.

FIGURE 2A. UNKNOWN, *Indians on Horseback,* nd. Oil on canvas. Image provided by the Remington Catalogue Raisonné, Buffalo Bill Historical Center, Cody, WY.

FIGURE 2B. FREDERIC REMINGTON, *The Snow Trail,* 1908. Oil on canvas. 27 x 40 in. Gift of the Remington Estate 66.39. Image courtesy Frederic Remington Art Museum, Ogdensburg, NY (Public Library Collection).

by the vetting committee, which comprises three members in addition to me: Laura Foster, curator of the Frederic Remington Art Museum; Dr. Emily Neff, curator of American art at the Museum of Fine Arts, Houston; Dr. Sarah Boehme, director of the Stark Museum in Orange, Texas. These experts, representing some of the most distinguished collections of Remington's art, have looked at a dozen or more copies like this, and, with tongue in cheek, have dubbed their author "master of the grid." An example, *Indians on Horseback* (FIG. 2A), relates to an original work in the Frederic Remington Art Museum titled *The Snow Trail* (FIG. 2B). The Museum of Fine Arts, Houston owns a similar example (without the grid), a black and white oil on canvas (FIG. 3A) copied from another *Collier's* illustration, *The Grass Fire*. The original (FIG. 3B) can be found today in the collection of the Amon Carter Museum. The author of both these copies evidenced a crudity of paint handling, brushwork and figural treatment.

The style of another copyist, a man who generally worked in watercolor, has been ascribed to Harry Sickles, who is thought to have practiced his craft in Chicago and Minneapolis. Sickles was famous for translating known Remington images into rudimentary, miniature watercolor vignettes that decorated the pages of books, many in first edition volumes that Remington had written. He also produced independent artworks and is thought to have been the creator of what has come to be known as the fake "kicking horse signature." (FIG. 4) These phony signatures appear with many of these images and as ersatz inscriptions on title pages of some Remington books.

FIGURE 3A. After FREDERIC REMINGTON. *The Grass Fire (Backfiring),* 1908. Oil on canvas. 18 x 28 in. Museum of Fine Arts, Houston; The Hogg Brothers Collection; ACC. 43.47. Image courtesy Museum of Fine Arts, Houston.

FIGURE 3B. FREDERIC REMINGTON, *The Grass Fire,* Oil on canvas. 27 ⅛ x 40 ⅛ in. Acc. no. 1961.228. Image courtesy Amon Carter Museum of American Art, Fort Worth, TX.

FIGURE 4. HARRY SICKLES after Remington's 1892 illustration "Half Striding. Half Plunging. Down Went the Little Mare," in Francis Parkman's *The Oregon Trail*. From a 1987 submission to the Remington Committee. Image provided by the Remington Catalogue Raisonné (MS 23), Buffalo Bill Historical Center, Cody, WY.

FIGURE 5. UNKNOWN, *Untitled (Indians Roping a Horse)*, nd. Oil on canvas. Image provided by the Remington Catalogue Raisonné (MS 23), Buffalo Bill Historical Center, Cody, WY.

FIGURE 6. FREDERIC REMINGTON, *Two Ghosts I Saw*, 1891. Halftone reproduction. Image provided by the Remington Catalogue Raisonné (MS 23), Buffalo Bill Historical Center, Cody, WY.

FAKES

Fakes constitute the second largest category — approximately 23 % — of inauthentic works submitted to the Remington certification program. For our purposes, a fake is described as a painting or drawing that does not relate to any known original work by Remington, but is given a fraudulent signature and is generally of a subject that might conceivably have engaged the artist. Fakes are more difficult to discern and require more connoisseurship than copies since a copy can be placed next to the original (or an illustration of the original) to compare technique. Fakes, as defined above, have no point of comparison, so years of experience with Remington's body of work must be brought to bear to render a valid opinion.

A representative example of a fake, brought forward in 1995, is an untitled oil on canvas depicting two Indians on horseback working to rope a third horse (FIG. 5). Remington was known to have painted several compositions of this sort, including a *Harper's Weekly* ink wash illustration, *Two Ghosts I Saw* (FIG. 6) from 1891 and an oil titled *The Ceremony of the Fastest Horse* of 1900 (The Art Institute of Chicago). The untitled fake borrowed galloping horses in profile across the picture plane but the underlying drawing, the anatomical rendering, and the paint handling in the fake are noticeably unsophisticated and not reminiscent of Remington's hand. The fake is signed Remington (lower left), but the letters are labored rather than fluid, as we would expect. In addition, the artist's materials are not

FIGURE 7A. UNKNOWN FORGER. Modified work by John Marchand, *All at Once She Looked up at Jim.* Signed lower right "Frederic Remington 07." Image provided by the Remington Catalogue Raisonné (MS 23), Buffalo Bill Historical Center, Cody, WY.

J.M. MARCHAND
1911
"All at once she looked up at Jim. 'Say, Jim, when are we going to get married?' Just like that it come out, soft and casual"

FIGURE 7B. JOHN MARCHAND, *All at Once She Looked Up at Jim*, an illustration from *Cosmopolitan Magazine* (August 1911). Image provided by the Remington Catalogue Raisonné (MS 23), Buffalo Bill Historical Center, Cody, WY.

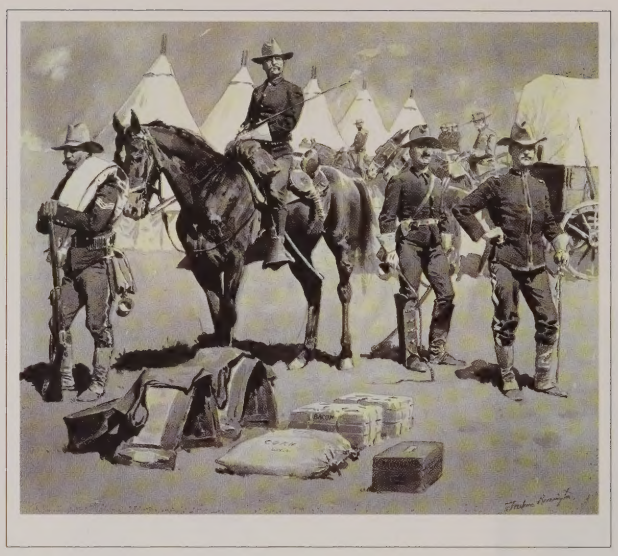

FIGURE 8. FREDERIC REMINGTON, *We Have Got the Men and the Corn and The Money and the Mules,* 1894. Watercolor en grisaille. Signed lower right. 17 ¾ x 21 ½ in. Private collection. Image courtesy of J. N. Bartfield Art Galleries, Inc.

those typically utilized by Remington. He uniformly employed F. W. Devoe & Co. canvasses and metal, 1888 patented stretcher devises. The fake painting was on an unmarked canvas and used simple wooden stretcher keys.

PASTICHES

Pastiches are works that copy elements of two or more known Remington paintings or drawings, and are signed with the intent to deceive. This category of inauthentic pieces is the smallest. Only 12 pastiches have been submitted, or slightly over 2% of all works brought before the Remington vetting committee from 1985 until today.

FORGERIES

About 16% of all non-original items presented to the vetting program have been forgeries. These are typically paintings and drawing by a recognized artist whose signature has either been painted out or cut off and replaced by "Frederic Remington." Sometimes the authorship of the painting is readily recognized, as in the case of the famous set of black and white oils collected by Mary Pickford and Douglas Fairbanks for their Los Angeles home and known widely as the "Pickfair Remingtons." They all turned out to be by the hand of a somewhat less renowned New York illustrator, John Marchand, and had appeared as plates for stories published in popular American magazines during the teens and 1920s. An example of these, an untitled work (**FIG. 7A**), was submitted in 2004 and had illustrated Elizabeth Frazer's story, "The Brand-Blotter," under the title of "All at Once She Looked Up at Jim," in *Cosmopolitan Magazine*, in 1911 (**FIG. 7B**). The forger not only signed the work as Remington's and re-dated it to 1907, but altered the composition to eliminate the story's heroine, since Remington was known to have rarely painted women. Other noted American artists whose works have been re-ascribed to Remington over the years include Harvey Dunn, Herbert Dunton and Gilbert Gaul. It was assumed that these alterations were carried out because Remington's market was stronger than some of his colleague's.

• • •

These four categories then are representative of several types of inauthentic flatworks that have been submitted over the past 25 years, since the program was formalized in 1985. In summary, 497 two-dimensional works have come forward and official opinions rendered. Of those 497 pieces, 109 (22%) have been determined to be original, as for example an untitled 1894 ink wash drawing of infantry and cavalry assembled in camp during the Spanish-American War (**FIG. 8**) that came before the committee in 2004 and had not been known to exist before then. Another 384 pieces (77%) were determined not to be original and 4 works (1%) were issued an inconclusive opinion. The Historical Center maintains records of all opinions, and by contract with the owners is allowed to publish or use for research any results of the committee's findings. The committee assembles in Cody twice annually to review works recently submitted. Generally about 20 to 25 pieces are inspected at each meeting. Newly discovered original works are incorporated into the files for the Remington catalogue raisonné, which may one day soon be republished in electronic form to complement the 1996 two-volume printed set.[3]

[3] I am most grateful to the Buffalo Bill Historical Center and its director, Bruce Eldredge, for their support in the development of this article. Special thanks also go to Laura Fry of the Historical Center's Whitney Gallery of Western Art staff for researching and collating the statistics for this piece and for tracking down many of the images used here, and to Laura Foster of the Frederic Remington Art Museum for her assistance with the preparation of this article.

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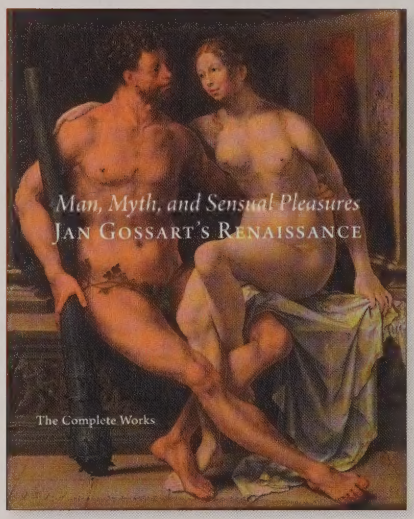
REDISCOVERING A NORTHERN RENAISSANCE MASTER

GERTRUDE DE G. WILMERS*



Man, Myth and Sensual Pleasures Jan Gossart's Renaissance: The Complete Works

EDITED BY MARYAN W. AINSWORTH

AUTHORS: MARYAN W. AINSWORTH, STIJN ALSTEENS, AND NADINE M. ORENSTEIN

With contributions by:
Lorne Campbell, Ethan Matt Kaveler, Peter Klein, and Stephanie Schrader
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Scholars have long puzzled over the work of the Netherlandish painter Jan Gossart (c. 1478-1532). Was he an imitator or an innovative and original artist? Although celebrated as a skillful and original artist in his own time by the Dutch biographer Karel Van Mander,[1] the renowned German art historian Max Friedländer and many of his contemporaries considered him "essentially a copyist."[2] And how does one explain the development of an oeuvre that seems, at times, to unfold in a backwards direction? The organizers of a recent exhibition in New York City, entitled *Man, Myth and Sensual Pleasures, Jan Gossart's Renaissance*, have proposed intriguing answers to many of these previously unresolved questions.

The first major presentation of Gossart's work in 45 years,[3] the exhibition was organized in 2010 by the Metropolitan Museum[4] in association with the National Gallery, London where a considerably smaller version opened in February 2011 under the name "Jan Gossaert's Renaissance."[5] Altogether fifty-two museums and other institutions in twelve countries lent works to the New York venue, which included many of Gossart's major works, including fifty paintings by or after the master (sixty-three paintings attributed to Gossart survive), and a large number of drawings and prints.[6] Unfortunately, a small number of his most impressive and inno-

* Gertrude Wilmers, Ph.D. is an art historian and author of *Cornelis Schut (1597-1655): A Flemish Painter of the High Baroque* (Brepols, 1996) and, with Julie Sloan, of *Frederic Crowninshield: A Renaissance Man in the Gilded Age* (University of Massachusetts Press, 2010). She is also a member of IFAR's Board of Directors.

1 Hessel Miedema, ed., Karel van Mander, *The Lives of the Illustrious Netherlandish and German Painters from the First Edition of the Schilder-Boeck (1603-1604)* (Doornspijk, 1994-99), vol. 1, pp. 160-61. The first biography of Gossart is published in Van Mander's *Lives*, pp.158-63.

2 Max J. Friedländer, *Early Netherlandish Paintings, VIII, Jan Gossaert and Bernart van Orley* (Leyden: A. W. Sijthoff, 1962), p. 44.

3 In 1965, Henri Pauwels, H.R. Hoetink, and Sadja Herzog organized *Jan Gossaert genaamd Mabuse*, held in Rotterdam's Museum Boymans-van Beuningen, and in Bruges at the Musée Communal.

4 The exhibition opened October 5, 2010 and closed January 17, 2011.

5 The London exhibition uses the modern spelling of the artist's name — with an "e" — whereas the Metropolitan Museum employs the original spelling.

6 A delightful aspect of the exhibition — thanks to the unusually large number that have survived — was the quantity of drawings exhibited. Scholars will no doubt differ, in particular, on a group that has been restored to the master's oeuvre, including four that have never before been published under his name. Although Gossart's drawings were made to serve a number of purposes, none preparatory to his painted works have survived.

FIGURE 1. JAN GOSSART, *Neptune and Amphitrite*, 1516. Oil on oak panel, 75 ¼ x 50 ½ in. (191 x 128.4 cm). Staatliche Museen zu Berlin, Gemäldegalerie. Photo: bpk, Berlin/Gemäldegalerie, Staatliche Museen, Berlin/Art Resource, NY.

FIGURE 2. JAN GOSSART AND GERARD DAVID, *The Malvagna Triptych*, ca. 1513-15. Oil on panel, center panel 17 ⅞ x 13 ¾ in. (45.5 x 35 cm). Photo: Galleria Regionale della Sicilia, Palazzo Abatellis, Palermo.

vative undertakings could not travel to the show, including the National Gallery, London's *Adoration of the Kings* (cat. 9), Berlin's massive *Neptune and Amphitrite* (**FIG. 1**), and Munich's *Danae* (cat. 35). The difficulties in transporting Gossart's paintings are complicated by the fact that all known works are on panel. This did not prevent the museum from exhibiting a number of his most intriguing paintings, however, such as *The Malvagna Triptych* from Palermo (**FIG. 2**) with its extraordinary High Gothic canopy, the *Deeis* from the Prado (cat. 29), with heads of the Virgin, Christ, and St. John the Baptist traced on paper from Van Eyck's *Ghent Altarpiece*, and the splendid triple portrait of the children of Christian II of Denmark from Windsor Castle (cat. 51).

As part of the exhibition, a video featuring Maryan W. Ainsworth, Curator in the Metropolitan Museum's Department of European Paintings,[7] and her colleagues, described some of the conservation practices performed on Gossart works. Of particular interest was their account of removing the discolored varnish and old re-touching on Gossart's painting of *Christ on the Cold Stone* (Szépmüvészeti Múzeum, Budapest, cat. 27), indicating that the painting was the autograph work among a large

"While the exhibition will be long remembered for the high quality of its art and its striking presentation, the catalogue will be of particular interest to IFAR's audience, due to its groundbreaking approach to the organization and contents of a catalogue raisonné."

number of copies of this popular composition,[8] and allowing viewers to fully admire such details as the exquisitely poignant expression on the face of Christ.

Published in conjunction with the show was a weighty 484 page catalogue authored by Ms. Ainsworth and Nadine M. Orenstein and Stijn Alsteens, Curator and Associate Curator respectively in the Department of Prints and Drawings at the Met. The catalogue, the subject of several years of exhaustive research, contains eight essays,[9] a catalogue raisonné of the "complete works," including paintings, drawings, and prints, and, in an appendix, a chart of the dendrochronology of certain of the artist's panels. Gossart's paintings are organized

7 Ainsworth has been overseeing the technical examination of Flemish and Dutch paintings at the Met for a number of years. Her groundbreaking study *Art and Autoradiography: Insights into the Genesis of Paintings by Rembrandt, Van Dyck, and Vermeer* (New York: The Metropolitan Museum of Art), appeared in 1983.

8 The painting was cleaned and restored at the Met in 2009-10 by Michael Gallagher. Scientific analysis was carried out in Budapest and at the Met, see catalogue, pp. 210, fn. 9.

9 In addition to an Introduction and chapters on Gossart's artistic milieu and working methods by Ainsworth, there are chapters on his drawings by Alsteens, his printmaking by Orenstein, his depictions of architecture by Ethan Matt Kavaler, and his sojourn in Rome and his mythological nudes by Stephanie Schrader. Lorne Campbell, Senior Research Curator at the National Gallery, London, wrote some of the catalogue entries for the paintings in that museum, see cat. nos. 2, 8, 57, and 60.

FIGURE 3. Attributed to GERARD DAVID, *Virgin and Child in the Church,* left panel of *The Doria Pamphilj Diptych,* ca. 1510-15. Oil on oak panel; painted surface 15 ⅞ x 8 ⅝ in. (40.2 x 22 cm). Galleria Doria Pamphilj, Rome. Photo: Alinari/Art Resource, NY.

FIGURE 4. Attributed to GERARD DAVID, *Virgin and Child in the Church,* infrared reflectogram of underdrawing. Photo: © Paintings Conservation Dept., National Gallery of Art, Washington.

chronologically by theme, an arrangement that works well given the artist's relatively limited subject matter. While the exhibition will long be remembered for the high quality of its art and its striking presentation, the catalogue will be of particular interest to IFAR's audience, due to its groundbreaking approach to the organization and contents of a *catalogue raisonné.*

"The catalogue accompanying the Gossart exhibition . . . serves . . . also as a catalogue raisonné of the complete works, whether or not they were exhibited in either of the two venues. As such, it is somewhat of a hybrid."

THE CATALOGUE RAISONNÉ

In recent years, a lively discussion has taken place concerning the appropriate structure of catalogues raisonnés.[10] To the minimalists, such a catalogue should contain only the basic information about individual works of art (date and inscriptions, dimensions, support, media, provenance, bibliography, exhibition history, and literature), with no interpretive, biographical, historical, and technical information or stylistic analysis. Others believe that such subjects should be included where appropriate as, for example, in an introductory essay, in the catalogue entries, or in a chronology of the artist's life.[11]

The first catalogue of Gossart's oeuvre proposing a chronology that is accepted today was produced by Max Friedländer,[12] who was able to overcome the confusion of other scholars confronted with a style that did not seem to follow a logical evolution.[13] Gossart lived in an age of transformation, during which the Catholic Church was challenged by the birth of the Reformation and the late Gothic tradition was challenged by the aesthetic ideals of Renaissance humanism, the rediscovery of the antique world, and stylistic influences from Italy and Germany. To Gossart's generation of Netherlandish artists fell the task of blending heterogeneous elements.

Gossart was born in 1478 in Maubeuge (or Mabuse), situated in the Burgundian-Hapsburg Nether-

[10] Nancy Mowll Mathews addressed some of these concerns in her *IFAR Journal* review of the first two volumes of Daniel Wildenstein's recent Gauguin catalogue. See: "Gauguin: A Savage in the Making. Catalogue Raisonné of the Paintings (1873-1888)," *IFAR Journal,* Vol. 6, no. 3 (2003), pp. 38-43.

[11] In her review of the Gauguin catalogue raisonné, pp. 42-43, Mathews notes that an argument against inclusion of interpretive material is that it will become outdated as scholars discover new information or take different approaches to the study of an artist's life and work. However, one might argue that the basic, traditional inclusions are also threatened by time and change as faulty attributions and dates are corrected and lists of exhibitions and literature are expanded.

[12] Friedländer, *Early Netherlandish Paintings, VIII.* The first German edition was published in 1933.

[13] Gossart was one of the first northern artists to regularly sign his works, but he rarely dated them.

lands and now a town in Northern France. In 1503, he is listed as a master in the Guild of St. Luke in Antwerp, where he adopted, and perhaps even helped to create, the strange idiosyncrasies of Antwerp Mannerism. In 1508, Gossart went to Rome in the entourage of the humanist Philip of Burgundy, for whom he made drawings after antique sculpture and architecture and became the first major Netherlandish artist to encounter the art of the ancient world and Italian Renaissance first hand. But rather than "evolving" into an artist noticeably influenced by classical and Italian Renaissance art upon his return to the Netherlands in 1509, Gossart pursued a number of avenues independently, focusing, in particular, on the art of living painters such as the Brugeois Gerard David, earlier artists such as Jan van Eyck, Hans Memling, and Hugo van der Goes, as well as the prints of his German near contemporary, Albrecht Dürer.

FIGURE 5. GERARD DAVID, *Virgin and Child at the Fountain* (detail), ca. 1510, Pen and brown ink, 7 11/16 x 5 3/16 in. (19.6 x 13.1 cm). Staatliche Museen zu Berlin, Kupferstichkabinett. Photo: bpk, Berlin/Kupferstichkabinett, Staatliche Museen, Berlin/ Art Resource, NY.

Scholars before Friedländer had placed Gossart's output during this post-return period *before* his Roman trip, assuming that on his return he would have adopted a style more strongly influenced by classic and Renaissance art. However, as Friedländer surmised, it was not until around 1515, when Gossart was hired to decorate the walls of Philip's castle in Souburg with scenes of mythological nudes, that his figures took on the heft and even hue of sculpture, harking back to his Italian studies. These mythological compositions show an interest in the nude form and an eroticism new to Northern art, while the figures depicted, which interact through complicated postures placed in a confined space, combine the traditions of Renaissance art with an incipient Mannerism. Gossart also continued to paint less convoluted religious scenes as well as a number of portraits throughout his life.

> "To art lovers fascinated by the material aspects of works of art, the volume will be a revelation . . ."

The catalogue accompanying the Gossart exhibition will, no doubt, add fodder to the on-going discussion over catalogues raisonnés due to its unusual presentation. It serves not only as an exhibition catalogue — with preliminary essays and full catalogue entries for each work of art — but also as a catalogue raisonné of the complete works, whether or not they were exhibited in either of the two venues. As such, it is somewhat of a hybrid. The volume is also extremely heavy and difficult to use, a problem that may eventually be solved by the digitization and electronic storage of such efforts.

To art lovers fascinated by the material aspects of works of art, however, the volume will be a revelation, as it includes detailed information on the condition and technical examination of each work to the extent that it has been possible to conduct such studies. The authors have been among the first to take full advantage in a catalogue raisonné of the advances in scientific knowledge over the past twenty years or so. They have worked with the Met's conservators[14] and others utilizing X-radiography, infrared reflectography, Raman microscopy, and other techniques in order to produce a new kind of catalogue raisonné in which technical analysis supplements connoisseurship. The results have allowed the authors to suggest alternative attributions and changes in chronology, put forth fresh theories relating to Gossart's working methods and techniques, propose new evidence of collaborations

[14] Ainsworth mentions, in particular, Michael Gallagher, Conservator in Charge, and Karen Thomas, Associate Conservator, Department of Paintings Conservation.

FIGURE 6. Copy after JAN GOSSART, *Virgin and Child,* 1527(?). Oil on oak panel, 12 ⅛ x 9 ⅝ in. (30.7 x 24.3 cm), The National Gallery, London. Curators at the National Gallery attribute this work to Jan Gossart, while the Metropolitan Museum of Art catalogue authors believe it to be a copy. Photo: © National Gallery, London/Art Resource, NY.

FIGURE 7. Attributed to JAN GOSSART, *Virgin and Child,* 1527(?). Oil on oak panel, 12 x 9 ½ inches (30.5 x 24 cm), Kunsthistorisches Museum, Vienna. Curators at the National Gallery, London believe this work to be a copy, while the Metropolitan Museum of Art catalogue authors attribute it to Gossart. Photo: Kunsthistorisches Museum, Vienna.

with other artists, in particular Gerard David, and offer original perspectives on issues of patronage, and iconography.

Instances of these discoveries are described throughout the catalogue. For example, the use of infrared reflectograms and X-radiographs have been employed by the museum's team to establish a more certain authorship for the Galleria Doria Pamphilj diptych of circa 1510-15 (**FIG. 3**), the subject of much past debate. By comparing the underdrawing of the left-hand panel (**FIG. 4**), based on Van Eyck's famous *Virgin in the Church* of 1437-39, to the draftsmanship of Gerard David (**FIG. 5**) and Gossart, and the underdrawing of the right-hand panel, depicting donor Antonio Siciliano and Saint Anthony, to Gossart's characteristic drawing style (cat. fig. 148), they deduce that the left-hand panel — thought by some to be an early work by Gossart — is, in fact, by David, while the right-hand panel is by Gossart with landscape by a specialist in that genre, possibly the miniaturist Simon Bening.[15] Infrared reflectography has also been employed to confirm attributions and or dates of undated drawings attributed to Gossart by comparing them to the underdrawing of paintings of known date and authorship.[16]

It should be noted that despite state of the art scientific analysis employed in an expert manner, disagreements on attributions can sometimes arise and connoisseurship must come to the rescue. This was the case with two paintings of the *Virgin and Child*, one in the National Gallery, London (**FIG. 6**), the other in the Kunsthistorisches Museum in Vienna (**FIG. 7**). Both were meticulously examined, but in the end, the technical investigations being inconclusive regarding authorship, it was primarily through connoisseurship and the similarity of the London painting to a later print that led Lorne Campbell and his team at the National Gallery to support their picture as the original while Ainsworth at the Met and her associates, also relying primarily on connoisseurship, championed the version in Vienna.

[15] A similar methodology is employed to find further collaborations between Gossart and David and his workshop in paintings of the period such as the *Malvagna Triptych*.

[16] Ainsworth compares the underdrawing of the drapery worn by St. Peter from one of the wings of the so-called Salamanca Triptych (Toledo, Ohio, Museum of Art, cat. 24B, and fig. 68) with a drawing of *The Virgin of Humility* (Staatliche Graphische Sammlung, Munich, cat. 74 and fig. 69) to strengthen her attribution of the latter to Gossart and place it in chronological context. See catalogue, p. 72.

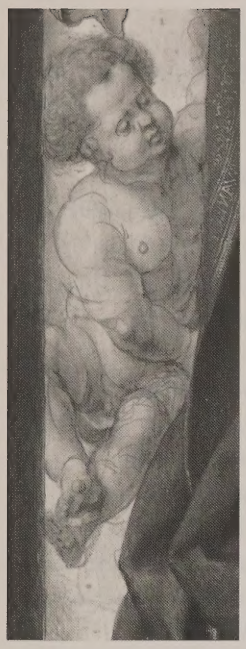

FIGURE 8. JAN GOSSART, *Saint Luke Drawing the Virgin*, infrared reflectogram, detail of FIGURE 9. Photo: © Art Innovation, Ingrid Hopfner.

In *Saint Luke Drawing the Virgin*, of 1520-22 (**FIGS. 8 AND 9**), an infrared reflectogram was utilized for a different purpose. In this case, it revealed aspects of Gossart's working methods by bringing to light the remnants of traced lines transferred to a prepared panel from a drawing or cartoon. The authors postulate that Gossart used cartoons infrequently during his early career and began to employ them for his more ambitious designs only after the practice became more widely known in the Netherlands as a result of the arrival in Brussels of the cartoons for Raphael's Acts of the Apostles tapestry series.

New discoveries were also made through research into Gossart's artistic milieu and patronage. In addition to amplifying Gossart's work with Gerard David in Bruges, the authors call attention to the impact of the German sculptor Conrad Meit on Gossart's increasingly sculptural figures, and explore his relationship with other contemporary artists such as Jan Cornelisz Vermeyen, Jan van Scorel, and Bernard van Orley. Iconographic research into the eroticized mythological nudes decorating Philip of Burgundy's castle walls has led Stephanie Schrader to propose an identification of the male figures, such as the monumental god of the seas in the artist's *Neptune and Amphitrite* (**FIG. 1**), as *portraits historiés*, in which "Gossart invited Philip to compare his seductive physical charms with those of a virile Neptune."[17] As a result of this example and others, the authors have proposed that the artist's shifts in style are related to the contrasting tastes of his patrons.

[17] See catalogue, p. 66.

FIGURE 9. JAN GOSSART, *Saint Luke Drawing the Virgin*, ca.1520-22. Oil on oak panel, 43 1/8 x 32 ¼ (109.5 x 82 cm). Kunsthistorisches Museum, Vienna. Photo: Erich Lessing/ Art Resource, NY.

The technical examinations performed on Gossart's oeuvre, through the collaboration between the curators and the conservation staff of the Metropolitan Museum, have confirmed the growing tendency to view his works as highly innovative as both a painter and draftsman. By demonstrating Gossart's originality through the exhibition and its catalogue, those involved in this remarkable endeavor have made an appreciation of his oeuvre available to a wider audience. The authors have expressed the hope that continued investigations into the working methods and techniques used by the master will "bring greater understanding of Jan Gossart's pivotal position in the development of painting techniques in northern Europe in the sixteenth century."[18] Certainly the exceptional level of scholarship contained in the exhibition's catalogue should lead the way.

• • •

[18] See catalogue, p. 86. Ainsworth and her colleagues hope to create a Website that "will present the findings of conservators and conservation scientists at various institutions in order to facilitate a broader discussion of Gossart's techniques," see catalogue, p. 69. A separate study presenting documents on Gossart's career, listed in the catalogue's bibliography, is also forthcoming: Sytske Miedema, and Anna Koopstra, *The Documentary Evidence* (Turnhout, Belgium, 2011).

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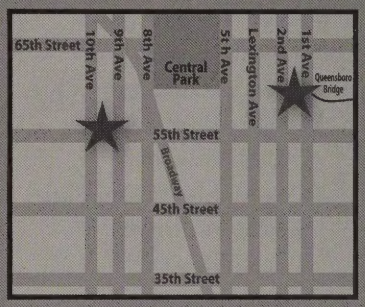

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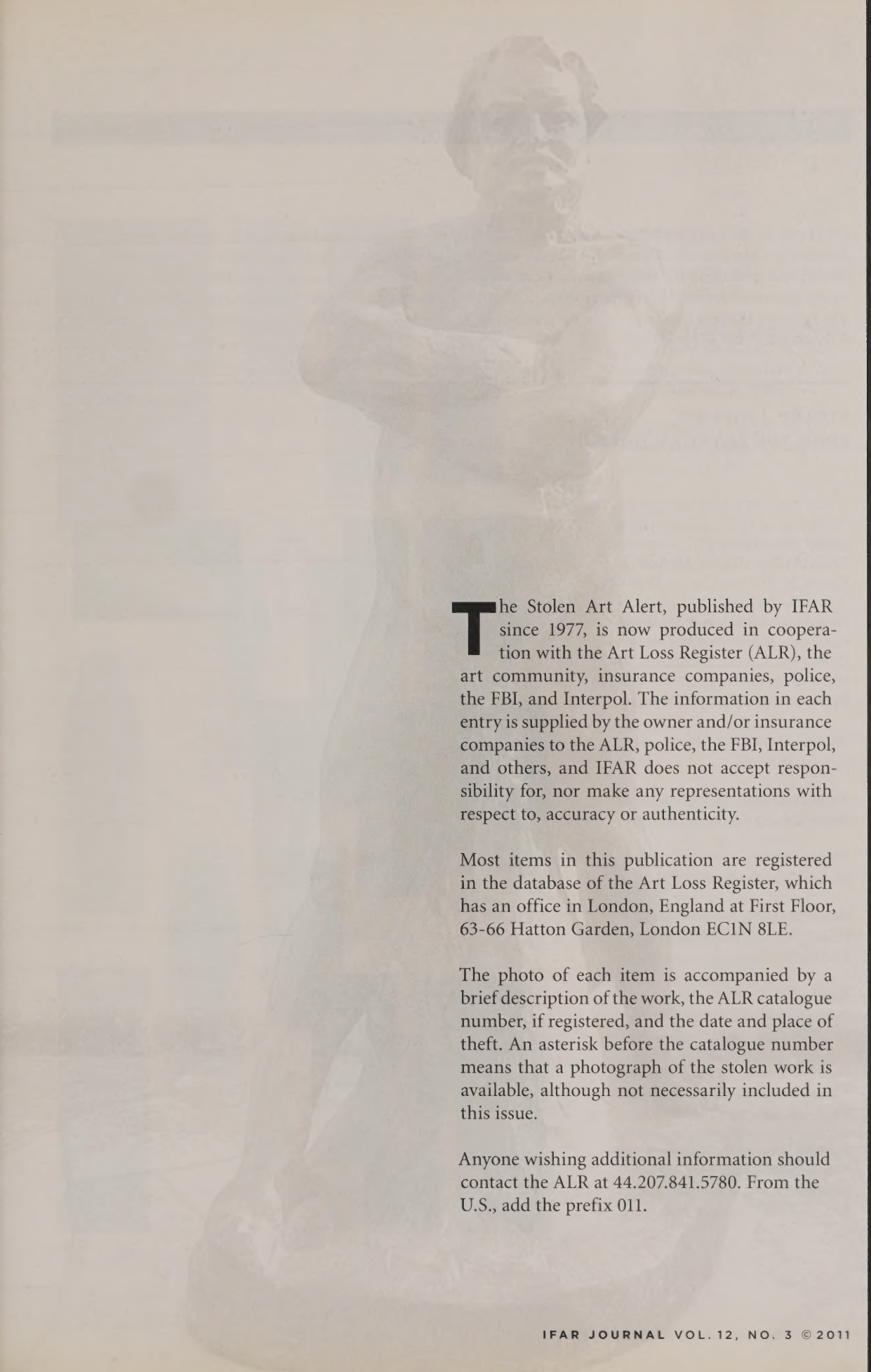

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Most items in this publication are registered in the database of the Art Loss Register, which has an office in London, England at First Floor, 63-66 Hatton Garden, London EC1N 8LE.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 44.207.841.5780. From the U.S., add the prefix 011.

STOLEN ART ALERT

On March 15, 2011, Egypt's Supreme Council on Antiquities posted a list of 54 objects missing from the Egyptian Museum in Cairo as a result of events in January 2011. As IFAR Journal went to press, 34 items were still missing; 20 were recovered. ***Both the stolen and recovered items below are numbered according to their position on the Museum's original list of stolen objects.*** *Unless otherwise indicated, information and images are taken from The Egyptian Museum Database. In the next issue of IFAR Journal, we will publish items known to be missing from archaeological sites and storehouses.*

STOLEN / MISSING FROM THE EGYPTIAN MUSEUM

2 *Gilded Wood Statue of Tutankhamun Wearing the Red Crown.* H: 53.5 cm. Cat. no. JE 60713.

3 *Gilded Wooden Statue of Menkaret Carrying a Mummified Tutankhamun.* H: 84.5 cm. Cat. no. JJE 60716.1. The statue of Tutankhamun was broken off by the looters and is also missing.

6 *Wooden Model Vase.* H: 10.5 cm. Cat. no. JE 26083.

7 *Terracotta Plaque in the Form of a Bed.* L: 28 cm. Cat. no. JE 31720.

12 *Bronze Striding Statue of Onuris.* H: 26.7 cm. Cat. no. JE 9080.

15 ~~*Bronze Standing Statue of Osiris.* H: 37.2 cm. Cat. no. JE 22040.~~ RECOVERED

19 *Bronze Striding Statue of the Goddess Neith.* H: 14 cm. Cat. no. JE 30324.

20 *Inscribed Bronze Seated Statue of a Cat (Bastet) Dedicated by Padiamen.* H: 17 cm. Cat. no. JE 36598.

21 ~~*Inscribed Bronze Striding Statue of Harpocrates Wearing the Andjety Diadem.* H: 18 cm. Cat. no. JE 67925.~~ RECOVERED

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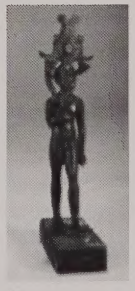
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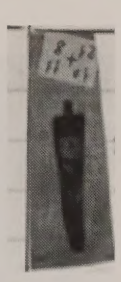
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no. TR 10.11.21.3.

25 *Bronze False Beard.* H: 9.5 cm. Cat. no. TR 10.11.21.8.

26 *Plastered Wooden Shabti of Tjuya Covered with Silver Leaf, Incised with Nine Lines of Inscription.* H: 27.7 cm. Cat. no. JE 68995.

27 *Wooden Shabti of Yuya with Ten Lines of Inscription in Yellow.* H: 30 cm. Cat. no. JE 68984.

28 *Painted and Gilded Wooden Shabti of Yuya with Seven Lines of Incised Inscription.* H: 25.7 cm. Cat. no. JE 68989.

29 *Plastered and Gilded Wooden Shabti of Tjuya with Nine Lines of Incised Inscription.* H: 27 cm. Cat. no. JE 68998.

30 *Wooden Shabti of Yuya with Eleven Lines of Incised Inscription in Yellow.* H: 27.8 cm. Cat. no. JE 68983.

32 *Wooden Shabti of Yuya with Nine Lines of Incised Inscription in Blue.* H: 22 cm. Cat. no. JE 68987.

33 *Uninscribed Calcite Shabti of Yuya.* H: 20.8 cm. Cat. no. JE 68994.

34 *Ebony Shabti of Yuya with Seven Lines of Inscription in Yellow.* H: 21 cm. Cat. no. JE 68992.

35 *Painted Wooden Shabti of Yuya with Two Vertical Columns of Incised Blue Inscription.* H: 25.5 cm. Cat. no. JE 68993.

36 *Unfinished Limestone Statue of Nefertiti as an Offering Bearer.* H: 43 cm. Cat. no. 44867.

37 *Red Granite Striding Statue of an Amarna Princess.* H: 26 cm. Cat. no. 44874.

STOLEN ART ALERT

38 *Quartzite Head of an Amarna Princess.* H: 14 cm. Cat no. JE 65040.

39 *Steatite Statue of Bes on a Calcite Base.* H: 13 cm. Cat. no. 53250.

40 *Quartzite Statue of an Amarna Princess.* H: 22 cm. Cat. no. JE 44873.

41 *Steatite Statue of a Scribe with Thoth as a Baboon on a Limestone Base.* H: 14 cm; W: 6.8 cm; L: 11.2 cm. Cat. no. JE 59291.

42 *Painted Limestone Statue of a Seated Man.* H: 18.4 cm; W: 11 cm; L: 6 cm. Cat no. JE 52976.

43 *Bronze Statue of an Apis Bull with a Sun Disk Between its Horns.* L: 10.5 cm. Cat. no. JE 29357.

44 *Striding Bronze Figure of Nakht.* H: 10.7 cm. Cat. no. JE 30204.

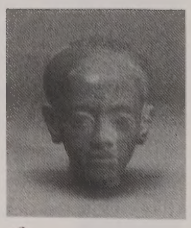
45 *Painted Limestone Shabti of an Official.* H: 20 cm; W: 6.5 cm; L: 4.5 cm. Cat. no. JE 39590.

47 *Gold, Stone and Faience Collar.* L: 21 cm. Cat. no. JE 47906.

51 *Part of Lapis Lazuli Girdle of Merytamun* B. L: 38 cm. Cat. no. JE 55175.

53 *10 Faience Amulets and a Faience Bead.* Cat. no. JE 94481.

54 *Painted Limestone Standing Statue of a Young Woman Wearing a Large Wig.* H: 20.5 cm. Cat. no. JE 27326.



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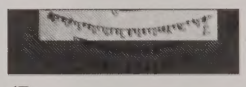

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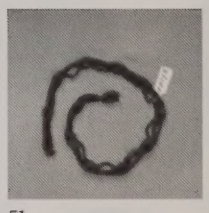

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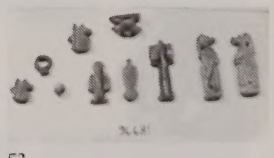

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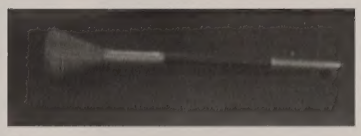

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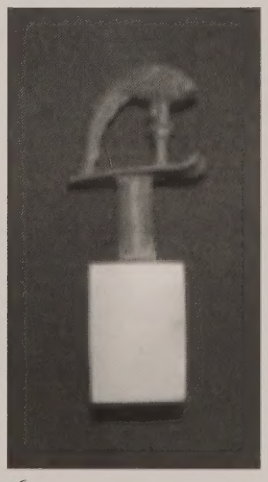

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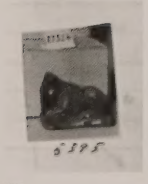

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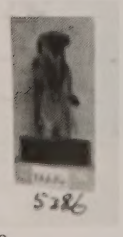

18

RECOVERED EGYPTIAN ITEMS

1 *Gilded Wooden Figure of Tutankhamun on a Boat, Throwing a Harpoon.* H: 75.5 cm. W: 5.6 cm; L: 18.5 cm. Cat. no. JE 60710.1. The figure was broken off by the looters. All that remained were the boat, the king's feet and right arm, the harpoon, and bronze hoop. The rest was found, damaged, on April 12.

4 *Gilded Wood Fanstock.* L: 69 cm. Cat. no. JE 62006. (Carter 600.)

5 *Gilded Bronze Trumpet with Painted Wooden Core.* L: 50.5 cm. Cat. no. JE 62008.

8 *Bronze Seated Statue of Anubis.* H: 13.5 cm. CG 38530.

9 *Bronze Seated Statue of Bastet.* H: 10.4 cm. CG 38998.

10 *Bronze Striding Statue of the God Hapi.* H: 16.5 cm. Cat. no. JE 77.

11 *Bronze Top Sceptre in the Shape of the Goddess Hat-Mehit Wearing a Fish Headdress (Lates Nilotica).* H: 15 cm. Cat. no. JE 658.

13 *Bronze Seated Statue of Osiris.* H: 18 cm. Cat. no. JE 17914.

14 *Schist Striding Statue of Neferhotep.* H: 14 cm. Cat. no. JE 18020.

16 *Bronze Fish on a Stand.* H: 9 cm. Cat. no. JE 22196.

17 *Limestone Statue of a Recumbent Bull.* H: 7.5 cm; L: 10 cm. Cat. no. JE 27324.

18 *Bronze Standing Statue of Sobek in the Form of a Crocodile-headed Man.* H: 12 cm. Cat. no. JE 29868.

STOLEN ART ALERT

22 *Inscribed Bronze Sceptre of Ankhusiri.* H: 55 cm. Cat. no. JE 91488.

23 *Bronze Statue of an Apis Bull Wearing the Sun Disk and Uraeus.* H: 11 cm; L: 12 cm. Cat. no. TR 3.2.19.23.

24 *Bronze False Beard.* H: 12 cm. Cat. *Lines of Inscription in Yellow.* H: 29.8 cm. Cat. no. JE 68982.

31 *Wooden Shabti of Yuya with Nine*
46 *Faience Round Bead Bracelet.* L: 78 cm. Cat. no. JE 45664.

48 *Faience Bead Collar with Pendants in the Shape of a Lily.* L: 29 cm. Cat. no. JE 47909.

49 *String of 28 Coral Beads.* L" 18 cm. Cat. no. JE 49104.

50 *String of Gold Beads and Figurines.* L: 15 cm. Cat. no. JE 49105.

52 *Necklace Composed of 44 Glass Beads Molded in Metal.* L: 66 cm. Cat. no. JE 58434.

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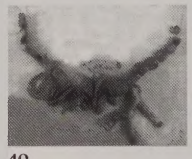

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STOLEN ART ALERT

STOLEN ART (CONT.)*

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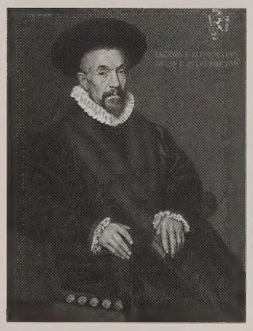

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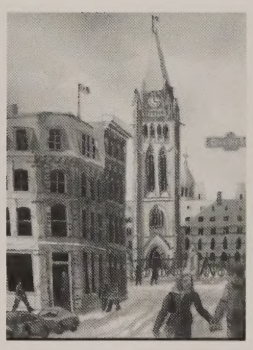

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156 **ELEANOR ABRAMS** (American, 1885-1967). ***Villa Monticello, Bermuda.*** 18" x 15" (45.72 x 38.1 cm). *L.11.82. Stolen from a private residence in Pembroke, Bermuda on February 8, 2011.

157 **BANKSY** (English, born 1974). ***Caution.*** Stolen in Los Angeles, CA on February 25, 2011.

158 **RADEN BASOEKI ABDULLAH** (Indonesian,1915-1993). ***Cah Angon dan Kebo (Shepherd and Buffalo),*** ca. 1915-22. *L.11.13. Stolen from the private residence of Hatta, former Prime Minister, in Central Jakarta, Indonesia and replaced with a fake on December 27, 2010.

159 **JACOPO BASSANO** (Italian, 1510/15-1592). ***Portrait of a Man (Senator Jacobus Menochius).*** Oil on canvas. 118.01 x 89 cm (Approx. 46 ½" x 35"). *L.11.114. Stolen in Haarlem, Holland on September 10, 1940.

160 **BHAT BOY** (English/Canadian, contemporary). ***Four Corners, 2011.*** Oil on canvas. 12" x 9" (30.48 x 22.86 cm). *L.11.143. Stolen from an art gallery in Ottawa, ON, Canada on February 20, 2011.

161 **VIRGINIA CLARK** (American, 1878-1962). ***Portrait of a Young Girl,*** Oil on canvas. 36" x 28" (91.44 x 71.12 cm). *L.11.166. Stolen from a private residence in East Hampton, NY on February 26, 2011.

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* *Numbering for the year 2010/2011 Cumulative Index of Stolen Art began with Vol. 12, no. 1.*

STOLEN ART ALERT

STOLEN ART

The following two paintings by **JASPER FRANCIS CROPSEY** *(American, 1823-1900) were stolen from the Ringwood Manor Museum, Ringwood, NJ on March 2, 2011. *L.11.145:*

162 ***Upper Hudson,*** 1871. Oil on canvas. See color photo on inside back cover.

163 ***Greenwood Lake,*** 1876. Oil on canvas. Approx. 12" x 20".

163

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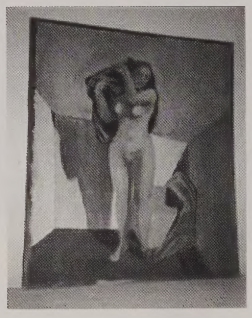
164 **HANS ERNI** (Swiss, 1909-). ***Naked Woman with Scarf,*** ca.1930-35. Oil on canvas. 73 x 59.99 cm (approx. 28 ¾" x 23 ½"). *L.11.29. Stolen in Lucerne, Switzerland on December 2, 2010.



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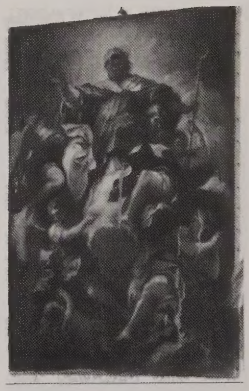
165 **LUCA GIORDANO** (Italian, 1632-1705). ***Beatification of Saint Nicholas.*** Oil on canvas. *L.11.167. Stolen from the mayor's office, Naples, Italy on January 1, 2011.



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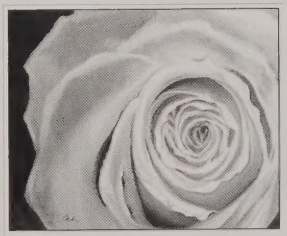
166 **FRANCESCO GUARDI,** after (Italian, 1712-1793). ***View of the Punta Della Dogana and The Church of San Giorgio Maggiore, Venice.*** See color photo on inside back cover.

The following two paintings by **FONTAINE JACOBS** *(American, contemporary) were stolen from a gallery in Friendswood, TX on September 26, 2010. *N10.190:*

167 ***Hearts Center.*** Oil on canvas. 20" x 24" (50.8 x 60.46 cm).



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168 ***Lotus.*** Oil on canvas. 20" x 24" (50.8 x 60.46 cm).

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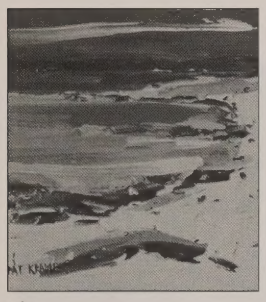

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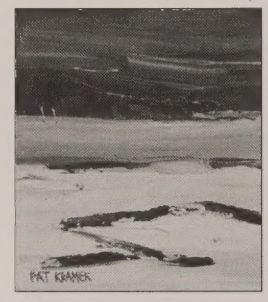

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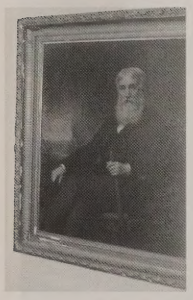
The following two paintings by **PAT KRAMER** *(English, contemporary) were stolen from a gallery in Stirling, Scotland on January 4, 2011. *L.11.16:*

169 ***Untitled (Seascape).***

170 ***Untitled (Seascape).***



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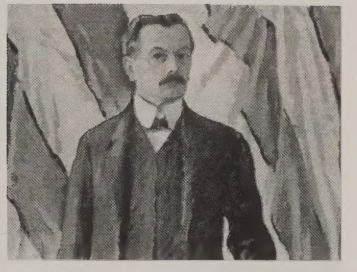
The following miniatures by **DANIEL MACNEE** *(English, 1806-1882) were stolen from a private residence in Southold, NY on February 1, 2011. *L.11.97:*

171 ***Portrait of a Man,*** 1874. 5.0 x 4.01 cm (approx. 2"x 1 ½").

172 ***Portrait of a Woman.*** Oil on canvas. 5.0 x 4.01 cm (approx. 2" x 1 ½").



173

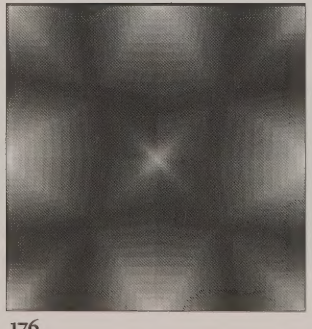
173 **KOLOMAN MOSER** (Austrian, 1868-1918). ***Self-Portrait,*** 1915. Oil on canvas. 38 x 50.01 cm (approx. 15" x 19 ¾"). *L.10.109190. Stolen in transit in Vienna, Austria on December 22, 2010.

174 **IVAN SHISHKIN** (Russian, 1832-1898). ***Oaks.*** See color photo on inside back cover.

175 **EDWARD ROBERT SMYTHE** (English, 1810-1899). ***Mare and Foal.*** 30.48 x 35.56 cm (12" x 14"). *L.11.128. Stolen from a private residence in Suffolk, England on January 11, 2011.

175

176 **VICTOR DE VASARELY** (French/Hungarian, 1906-1997). ***Untitled,*** 1970. Acrylic on canvas. 130 x 130 cm (approx. 51" x 51"). Titled, signed, and dated verso. *L.11.165. Stolen from a gallery in London, England on January 1, 2008.



176

STOLEN ART ALERT

STOLEN ART

*The following four paintings were stolen from the Ajaccio museum in Corsica, France on February 18, 2011. *L.11.7.*

177 **NICOLAS POUSSIN** (French, 1594-1665). ***Midas at the Source of the River Pactole.*** See color photo on inside back cover.

178 **GIOVANNI BELLINI,** attrib. to (Italian, 1430-1516). ***The Virgin and Child.*** Tempera on panel. 65 x 46.5 cm (approx. 25 ½" x 18 ¼").

179 **MARIOTTO DI NARDO** (op. 1394-1424). ***Pentecost.*** Tempera on panel. 47 x 28 cm (approx. 18 ½" x 11").

180 **UNKNOWN.** ***The Madonna and Child Surrounded by Seraphim*** (Italian, 16th century). Oil on panel. 53 x 34 cm (approx. 20 ¾" x 13 ¼").

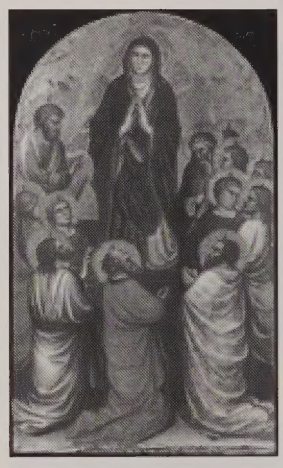
Information regarding the thefts of the following 4 paintings was provided by Interpol:

181 **HERMANN HESSE** (German/Swiss, 1877-1962). ***Untitled.*** *L11.29. Stolen in Montagnola, Switzerland between November 1 and November 18, 1998.

182 **THEODORE ROUSSEAU** (French, 1812-1867). ***Animated Landscape.*** Oil on panel. 28 x 44 cm (approx. 11" x 17 ¼"). Signed l/r. *L11.75. Stolen in Alès, France on July 25, 1990.

183 **HANS STAUDACHER** (German, born 1923). ***Abstract,*** 1995. Oil on canvas. 100 x 140 cm (approx. 39 ½" x 55 ¼"). *L.11.7. Stolen in Vienna, Austria on December 31, 2010.

178



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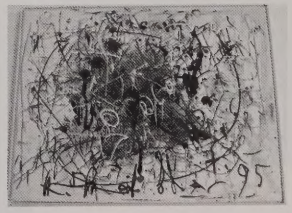

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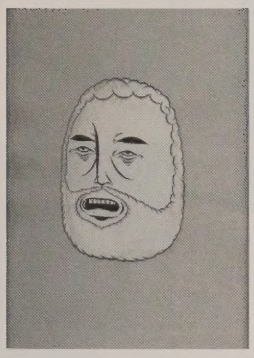
184

184 **ALEXEJ VON JAWLENSKY** (Russian, 1847-1941). ***Meditation,*** 1935. Oil on canvas. 18.01 x 13.69 cm (approx. 7 ¼" x 5 ¼"). Signed l/l. *L.11.7. Stolen in Murg-Haenner, Germany on March 1, 2010. See also item no. 188 below.

MIXED MEDIA

The following two works by **BARRY MCGEE** *(American, born 1966), both marked as property of Charles Linder, were stolen from a California restaurant on November 16, 2010. *L.11.1.*



185

186

185 ***Red Beard,*** 2007. Paint on paper. 12" x 9" (30.48 x 22.86 cm). Signed verso.

186 ***Headband,*** 2007. Paint on tan paper. 12" x 9" (30.48 x 22.86 cm). Signed verso.

Information regarding the following 4 stolen works was provided by Interpol:

187

187 **JEAN-CHARLES BLAIS** (French, born 1956). ***Bien Balance.*** Glycerophtalic paint on paper/papier mache. 189.99 x 400 cm (approx. 75" x 157 ½"). *L.11.7. Stolen in Toulouse, France on April 18, 1989.

188

188 **OSKAR SCHLEMMER** (German, 1888-1943). ***Fuenf Frauenkoepfe,*** 1937. Oil on paper and papier mache. 24.41 x 23.9 cm (approx. 9 ½" x 9 ¼"). *L.11.7. Stolen in Murg-Haenner, Germany on March 1, 2010. See also item no. 184 above.

STOLEN ART ALERT

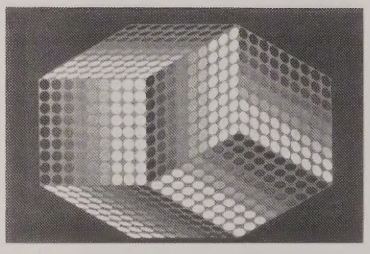
STOLEN ART

WORKS ON PAPER

189 **LING FENGMIAN** (Chinese, 1900-1991). ***Dancers.*** Ink on paper. 70 x 80.01 cm (approx 27 ½" x 31 ½"). *L.11.127. Stolen from a private residence in Gdynia, Poland on January 30, 2011.

189

190 **VICTOR DE VASARELY** (French/Hungarian, 1906-1997). ***Togonne.*** Silkscreen on paper. 73 x 89 cm (approx. 28 ¾" x 35"). Ed. no. 21/40. *L.11.7. Stolen in Aix en Provence, France on November 18, 2003.



190

SCULPTURE

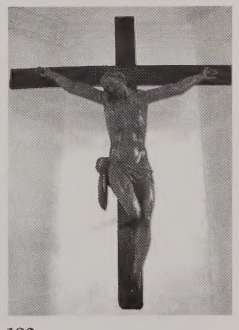
191 **RICK BARTOW** (American, born 1946). ***Untitled.*** *N10.193. Stolen from a gallery in Portland, OR on September 22, 2010.

191

192 **JULES DALOU** (French, 1838-1902). ***General Lazare Hoche.*** Bronze. H: 70.99 cm (approx 28"). *L11.19. Stolen from the Johannesburg Art Gallery in South Africa on December 11, 2010.

192

193 **HOUGOUMONT CHRIST** (French, 15th century). ***Wood with polychrome.*** 200 x 182.88 cm (Approx. 78 ¾" x 72"). H: 6". *L.11.7. Stolen from the chapel at the site of the Battle of Waterloo in Walloon Brabant, Belgium on February 1, 2011.



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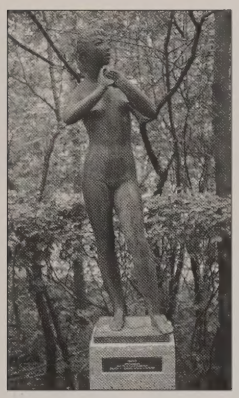

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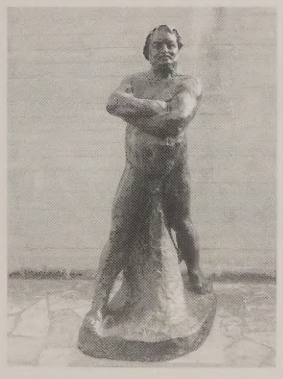

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27

194 **LEO MOL** (Ukrainian/Canadian, 1915-2009) ***Echo,*** 1968. Bronze. H: 105.99 cm (approx 41 ¾"). *N10.192. Stolen from business premises in Winnipeg, ON, Canada on October 11, 2010.

195 **AUGUSTE RODIN** (French, 1840-1917). ***Naked Balzac with Folded Arms,*** ca.1892-93. Bronze. H: 127 cm (approx. 50"). *L.11.149. Stolen from The Israel Museum in Jerusalem on January 1, 2011.

PRINTS, LITHOS

196 **ANDY WARHOL** (American, 1928-1987). ***Marilyn #30.*** See color photo on inside back cover.

RECOVERED ART*

PAINTINGS

27 **JEAN-BAPTISTE CAMILLE COROT** (French, 1796-1875). ***Wooded Landscape with Figures.*** Oil on canvas. 35.99 x 46.51 cm (Approx. 14 ¼" x 18 ¼"). *L.11.44. Stolen from the Kelvingrove Art Gallery and Museum in Glasgow, Scotland in 1996. Recovered by police in Edinburgh in January 2011 along with two other paintings — a landscape by Samuel Peploe and a work by Federico Barocci.

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* *Numbering for the year 2010/2011 Cumulative Index of Recovered Art began with Vol. 12, no. 1.*

STOLEN ART ALERT

RECOVERED ART

28 **FRANCESCO GUARDI** (Italian, 1712-1793). ***Il rio dei Mendicanti.*** Stolen from a private residence in Venice in 1986. Recovered by the Carabinieri in January 2011.

28

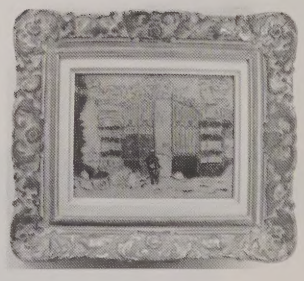
29 **ALEKSANDER GIERYMSKI** (Polish, 1849-1901). ***A Jewess with Oranges,*** 1880-81. Oil on canvas. 65.99 x 54.49 cm (approx 26" x 21 ½"). Signed l/l. *W.00.46. Seized by the Nazis in Warsaw, Poland in 1939. Recovered in Hamburg, Germany with the help of the ALR in November 2010.

29

30 **ANITA KLEIN** (English, born 1960). ***Maia is Upset.*** Stolen from a gallery in London, England in May 2009. Recovered with the help of a fan of the artist in London in March 2011.

30

31 **JAMES WILSON MORRICE** (Canadian, 865-1924). ***Château Leven.*** Oil on board. 13 x 16.99 cm (Approx 5 x 6 ¾"). *N88.467. Stolen in transit on June 26, 1988. Recovered by police in Toronto in August 2010.



31

32 **LELIO ORSI** (Italian, 1511-1587). ***Leda and the Swan.*** Oil on copper. 43 x 30 cm (approx. 17" x 1 ¾"). *L08.180. Illegally exported from Italy in 2006. The painting was sold at auction in New York in 2008, but the buyer canceled the sale after learning that Italian authorities were investigating its disappearance as part of the Italian patrimony. The painting was seized by U.S. Customs and Immigration Enforcement (ICE) in June 2008 and returned to Italy in January 2011.

32

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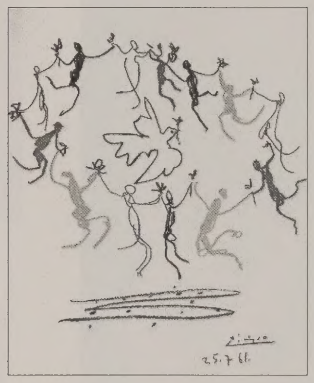

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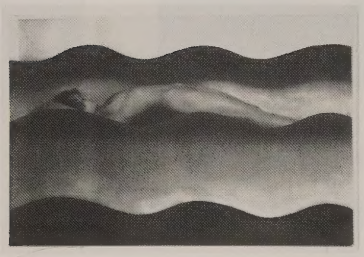

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36

33 **JOAQUIN SOROLLA Y BASTIDA** (Spanish, 1863-1923). ***El santero de la cofradia,*** 1913. Oil on panel, 19 x 13 cm. Stolen from the Benlliure Museum, Valencia, Spain on April 9, 2010. Recovered by local and national police in March 2011.

WORKS ON PAPER

34 **PABLO PICASSO** (Spanish, 1881-1973). ***La ronde de la paix,*** 1961. Pencil drawing. 62 x 49 cm (approx. 24 ½" x 19 ¼"). Signed l/r. Inscribed: Picasso 25.7.61. *L10.02. One of 32 works of art stolen from a private residence in La Cadière d'Azur, France in December 2009. This work was one of 27 recovered by police in La Ciotat, France in June 2010.

PHOTOGRAPHS

35 **FRANTISEK DRTIKOL** (Czech, 1883-1961). ***The Wave.*** 19.91 x 29.31 cm (Approx 7 ¾" x 11 ½"). *L.11.162. R1326. Stolen on March 13, 2011 from the Museum of Decorative Arts in Prague. Recovered in New York with the help of the ALR on March 22, 2011.

ANTIQUITIES

36 ***25 Clay Tablets and Cones with Cuneiform Writing*** (c. 300 — 1500 B.C.). Stolen/looted from the Iraq Museum during Operation Iraqi Freedom in 2003. Recovered from a California dealer by the U.S. Attorney's Office in Delaware in the summer of 2010 and returned to Iraq on February 18, 2011.

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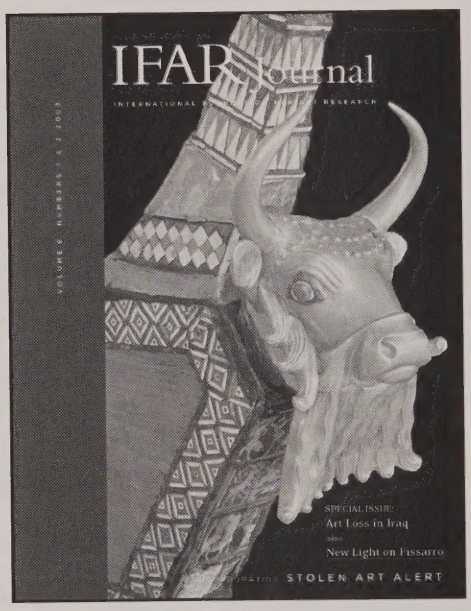

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166

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STOLEN ART

PAINTINGS

162 JASPER FRANCIS CROPSEY (American, 1823-1900). ***Upper Hudson,*** 1871. Oil on canvas. Approx. 12" x 20". Signed l/r. Stolen from the Ringwood Manor Museum, Ringwood, NJ on March 2, 2011. *L.11.145

166 FRANCESCO GUARDI, after (Italian, 1712-1793). ***View of the Punta Della Dogana and The Church of San Giorgio Maggiore, Venice.*** Oil on canvas. 20" x 36" (50.8 x 91.44 cm. *L.11.169. Stolen from a private residence in Southold, NY on January 19, 2011.

174 IVAN SHISHKIN (Russian, 1832-1898). ***Oaks.*** *L11.27. One of a collection of paintings and objets d'art stolen near Moscow, Russia from the residence of an oligarch on January 13, 2011.

177 NICOLAS POUSSIN (French, 1594-1665). ***Midas at the Source of the River Pactole.*** Oil on canvas. 58 x 82 cm (approx. 22 ¾" x 32 ¼"). *L.11.7. Stolen from the Ajaccio Museum in Corsica, France on February 18, 2011. See also item nos. 178-180.

PRINTS, LITHOS

196 ANDY WARHOL (American, 1928-1987). ***Marilyn #30.*** Print. *L10.109121. Stolen in transit between Los Angeles, CA and Saitama City, Japan on October 13, 2010.

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